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राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

बुधवार, 7 अक्तूबर, 2015 / 15 आश्विन, 1937

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla, the 5th October,2015

No. Sharm (A) 6-1/2014 (Awards).—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act,1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court

Shimla on the website of the Department of Labour & Employment of the Government of Himachal Pradesh:—

Sr.No.	Case No.	Title of the Case	Date of Award
1.	94/2013	Shri Rajak V/s M/S Kaveri Power technear H.P. barrier Baddi, Distt. Solan, H.P.	03-06-2015
2.	05/2015	Shri Kavinder Singh V/S M/S Ashoka Spanner (P) Ltd. Baddi, H.P.	14-08-2015
3.	42/2015	Employees Union V/S Bhojiya Dental College & Hospital, Baddi Solan, H.P.	25-08-2015
4.	26/2014	Smt. Krishna Devi V/S President Abhi Bhawak Sangh, Rajkiya Prathmik Tehsil Kandaghat Distt. Solan H.P.	31-08-2015
5.	03/2015	JP Workers Union V/S M/S Jai Parkash Hydro Power Ltd, Kinnour, H.P.	01-09-2015
6.	04/2015	-do- V/S -do-	01-09-2015
7.	53/2011	Shri Dev Raj V/S Fruit Technologist P/Sahib.	03-09-2015
8.	53/2007	Shri Manoj Kumar V/S M/S Sintex Industries Ltd. Nalagarh.	08-09-2015
9.	27/2009	Shri Parmanand V/S Bishop Cotton School, Shimla, H.P.	09-09-2015
10.	128/2010	Shri Rajinder Kumar V/S M/S Aar Aar casting Ltd. Solan, H.P.	14-09-2015
11.	30/2012	Shri Tej Ram V/S Xen HPPWD Sunni.	14-09-2015
12.	43/2013	Shri Narain Singh V/S DFO Renuka ji.	15-09-2015

By order,
Sd/-
Pr. Secretary (Labour & Employment).

APP.94/2013

Rajak V/s M/s Kaveri Power Tech Near H.P. Barrier Baddi Distt Solan

3/6/2015

Present: None for the petitioner.
Respondent already ex-parte.

Case called repeatedly, but none has appeared on behalf of the Petitioner. Be called after lunch.

Presiding Judge,
Labour Court, Shimla.

3/6/2015.

Present None for the petitioner.

Respondent already Ex-parte.

Case called repeatedly. However, none has appeared on behalf of the Petitioner. It is 2.30 P.M. Since, none has appeared on behalf of the petitioner. Therefore, the case is dismissed in default. The file after completion be consignedto records.

Announced
3/6/2015

Presiding Judge,
Labour Court, Shimla.

Ref. 05/2015

Sh Kavinder Singh Dogra V/s M/s Ashoka Spanners (P) Ltd Baddi

14.8.2015:

Present: Petitioner in person.

Sh Ram Chander Advocate for the respondent.

Vide separate statement recorded today, the petitioner has stated that since, he has settled the dispute with the respondent company and received a sum of Rs.63,000/- (Rs. Sixty Three thousand only) as full & final Statement, he does not want to pursue his claim.

The statement made by the petitioner has also been accepted by the Ld. Counsel for the respondent as per separate statement recorded today.

Since, a lawful compromise has been effected between the parties, hence , the reference, sent by the appropriate government for adjudication is answered accordingly. The statements, recorded , shall form part and parcel of thisaward/order. Let a copy of this award/order be sent to the appropriate government for publication in official gazette. File , after completion , be consigned to records.

Announced
14.8.2015

Presiding Judge
Labour Court, Shimla.

Ref. No. 42/2015

Employees Union V/s Bhojia Dental College & Hospital Bhud- Baddi, Solan

25/8/2015

Present: Sh. Kishore Chand, General Secretary, for the petitioner.

Sh. Vikram Bhojia, AR for respondent.

Sh. Kishore Chand, General Secretary, appeared on behalf for the petitioner and stated that a settlement/compromise has already been effected between the parties with respect to the demands raised vide demand charter dated 30/7/2013, the copy of which is Ex. PB. His such statement has also been accepted by Sh. Vikram Bhojia, who appeared on behalf of respondent. Let the statement of Shri Kishore Chand and Vikram Bhojia be recorded separately.

Statement of S/ Shri Kishore Chand Vikram Bhojia recorded separately.

Since, the parties have already settled their dispute, amicably, hence, the reference is answered accordingly. The statement, as aforesaid, the settlement Ex. PB shall from part and parcel of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records

Announce
25/8/2015

SUSHIL KUKREJA
Presiding Judge
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUMLABOUR COURT, SHIMLA

Ref no. 26 of 2014.
Instituted on 20.2.2014.
Decided on 31.8.2015.

Krishna Devi W/o Shri Baldev Kumar R/o Village Chaura Maidan, P.O Jhaja, Tehsil Kandaghat, District Solan, H.P. *Petitioner*…….

VS.

The President Abhi Bhawak Sangh, Rajkiya Prathmik Pathshala, Glaintee, Chaura, P.O Jhaja,Tehsil Kandaghat, District Solan, H.P. *Respondent*…….

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Niranjan Verma, Advocate.

For respondent: Already ex-parte.

AWARD

The reference, for adjudication, is as under:

"Whether termination of the services of Smt. Krishna Devi W/o Shri Baldev Kumar R/o* Village Chaura Maidan, P.O Jhaja, Tehsil Kandaghat, District Solan, H.P. who was appointed as Mid Day Meal Worker w.e.f. 30.3.2013 by the President Abhi Bhawak Sangh, Rajkiya Prathmik Pathshala, Glaintee, Chaura, P.O Jhaja, Tehsil Kandaghat, District Solan, H.P without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not *what amount of back wages, seniority, past service benefits and from which date the above worker is entitled to from the above employer?"

2. The above reference has been sent by the appropriate government for adjudication on 7.2.2014. After the receipt of the same, in this Court, notices were issued to the parties on 20.2.2014 and thereafter the case was fixed for 7.4.2014. On 7.4.2014, petitioner herself put in appearance before this Court whereas on behalf of the respondent, one Smt. Bhuvneshwari, appeared. Thereafter, the case was listed for filing of claim for 13.5.2014, on which date, Shri Niranjan Verma, Advocate appeared on behalf of petitioner but none appeared for respondent, hence, the respondent was proceeded against ex-parte vide order dated 13.5.2014.

3. The petitioner challenged her termination to be illegal on the ground that she was engaged as mid day meal worker and worked as such till 29.3.2013, and thereafter *w.e.f.* 30.3.2013, her services had been terminated illegally by the respondent without assigning any reason. Not only this, no opportunity of being heard was afforded to her. Junior to her had been retained by the respondent. The petitioner had completed 240 working days in a calendar year and preceding year as such the petitionerm prayed for her reinstatement with all the consequential service benefits including back wages.

4. Thereafter, the petitioner led exparte evidence. She appeared in the witness box as PW-1 to depose that she had worked, continuously, as mid day meal worker in Government Primary School Ghanti (Chohrda), P.O Jhaja, Tehsil Kandaghat, District Solan *w.e.f.* 3.9.2004 to 29.3.2013. On 30.3.2013, her services had been terminated without any notice. She worked for more than 240 days inevery calendar year. Junior to her namely Smt. Asha is still working. Her services had been terminated illegally.

5. PW-2, Reeta Sharma corroborated the statement of petitioner by stating that she knows the petitioner who had had been engaged as mid-day meal worker on 3.9.2004. On 30.3.2013, her services had been terminated illegally. Junior to petitioner Smt. Asha is still working with the respondent.

6. I have heard the Learned Counsel for the petitioner and also gone through the record of the case carefully.

7. Since, the evidence led by the petitioner remained un-rebutted as the respondent did not appear to contest this testimony of the petitioner, her evidence is sufficient to prove that she had worked for 240 days in the preceding calendar year under the respondent. So, prior to her termination, the respondent was under the legal obligation to comply with the provisions of the section 25-F of the Industrial Disputes Act. But, no such compliance was made by the respondent, hence, there is violation of section 25-F of the Act, on the part of respondent. As the result, the termination of petitioner on 30.3.2013 is not sustainable under law and is hereby set aside.

8. In order to claim back wages, the petitioner was required to lead convincing and satisfactory evidence that after her retrenchment/termination, she was not gainfully employed from the date when her services were terminated. ***It has been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla*** that "***full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held thatreinstatement must no be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry"***.

9. Therefore, having regard to the facts and circumstances of the case and also in view of the law laid down by the Hon'ble Apex Court, I am of the view that the petitioner is not entitled to back wages. However, since her services had been terminated in contravention of the provisions of the Act, I hold that the petitioner is entitled to reinstatement in service with seniority and continuity but without back wages.

10. In the light of my aforesaid observation, the claim of the petitioner is allowed and the reference is answered accordingly to the effect that the petitioner is ordered to be reinstated in service with seniority and continuity but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today this day of 31st August, 2015.

(Parveen)

(SUSHIL KUKREJA)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

Ref. 03/2015

Workers Union V/s M/s Jai Parkash Hydro Power Ltd.

1.9.2015:

Present: Sh Jasbir Singh, Advocate along-with shri Jeevan Singh, President of the workers union, for petitioner.
Shri Rahul Mahajan, Advocate for respondent.

Today, Shri Jeevan Singh , President of the J.P. workers Union, has stated that vide settlement Ex.PA, the dispute between the parties has been compromised/ settled amicably. That the conciliation proceedings were got effected by the Joint Labour Commissioner, Shimla between the parties and the settlement under section 12(3) of the Industrial Dispute Act,1947 was entered into between the parties on 6.5.2015, as such, the reference be decided/ answered in accordance withthe aforesaid settlement Ex.PA. To this effect, statement of Shri Jeevan Singh, President recorded separately.

In the light of the statement made by the president of the workers union and in view of the settlement Ex.PA. I am satisfied that a lawful compromise has been effected between the parties and as such the reference is answered accordingly. The statement of Shri Jeevan Singh and

settlement Ex.PA shall form part and parcel of this order/award. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced
1.9.2015

Sd/-
Presiding Judge
Labour Court, Shimla.

Ref. 4 of 2015

Workers Union V/s M/s Jai Parkash Hydro Power Ltd.

1.9.2015:

Present:- Sh Jasbir Singh, Advocate along-with shri Jeevan Singh, President of the workers union, for petitioner.
Shri Rahul Mahajan, Advocate for respondent.

Today, Shri Jeevan Singh, President of the J. P. workers Union, has stated that vide settlement Ex.PA, the dispute between the parties has been compromised/ settled amicably. That the conciliation proceedings were got effected by the Joint Labour Commissioner, Shimla between the parties and the settlement under section 12(3) of the Industrial Dispute Act,1947 was entered into between the parties on 6.5.2015, as such, the reference be decided/ answered in accordance with the aforesaid settlement Ex.PA. To this effect, statement of Shri Jeevan Singh, President recorded separately. In the light of the statement made by the president of the workers union and in view of the settlement Ex.PA. I am satisfied that a lawful compromise has been effected between the parties and as such the reference is answered accordingly. The statement of Shri Jeevan Singh and settlement Ex.PA shall form part and parcel of this order/award. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced
1.9.2015

Sd/-
Presiding Judge
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUMLABOUR COURT, SHIMLA

Ref no. 53 of 2011.
Instituted on 22.11.2011.
Decided on. 3.9.2015.

1. Dev Raj S/o Shri Pannu Ram R/o Village & P.O Dhaula Kaun, District Sirmour, HP.

2. Sharafat Ali S/o Shri Mohd. Ali R/O Village & P.O Rajgarh, District Sirmour, HP.

3. Firoz Khan S/o Shri Aagar Ali R/o Village Rampur Banjaran, P.O Dhaula Kaun, District Sirmour, HP.

4. Rukmani Devi D/o Shri Netar Singh R/o VPO Kolar, Tehsil Paonta Sahib, District Sirmour, HP.

Petitioners……..

VS.

The Fruit Technologist Horticulture Department, Dhaula Kaun, District Sirmour, HP.

Respondent……..

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioners: Shri R.K Khidta, Advocate.

For respondent: Shri Rajkumar Negi, Dy. DA.

AWARD

The following reference has been received from appropriate government for adjudication:

"**Whether termination of the services of S/Shri Dev Raj S/o Shri Punnu Ram, Sharafat Ali S/o Shri Mohd. Ali, Firoz Khan S/o Shri Asgar Ali and Ms. Rukmani Devi D/o Shri Netar Singh by The Fruit Technologist Dhaula Kaun, Tehsil Paonta Sahib District Sirmour, HP w.e.f. 7.8.2009, without issuing chargesheet, conducting enquiry and without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what service benefits and relief the above named workmen are entitled to from the above employer?"**

2. Briefly, the case of the petitioners, as made out from the joint statement of claim, is that petitioner no.1 (Dev Raj) was engaged as worker by the respondent department in the month of March, 1996, petitioner no. 2 (Sharafat Ali) was engaged as worker w.e.f. 3.10.2007, petitioner No.3 (Firoz Khan) was engaged as Driver in the month of August, 2006 and petitioner No.4 (Rukmani Devi) was engaged as worker/sales girl in the month of April, 2008. All the petitioners have worked, continuously, till 6.8.2009 and thereafter on 7.8.2009, their services had been terminated, illegally, without complying the mandatory provisions of the Act as neither any notice was served nor any compensation was paid in lieu of the notice. The petitioners visited the office of the respondent several times for their re-engagement but to no avail. Thereafter, they filed CWP No. 3000/09 against the respondent department wherein the Hon'ble High Court directed the respondent to reengage the petitioners, forth-with. In compliance to the order passed by the Hon'ble High Court in CWP No. 3000/09, the petitioners have been re-engaged, in service, w.e.f. 7.1.2010 and as such they are still working with the respondent. It is further averred that after the re-engagement of the petitioners, the respondent failed to pay complete wages to the petitioners from the date of their re-engagement till date. The services of the petitioners were terminated just to teach them a lesson as the petitioners have raised demand regarding weekly rest, paid holidays and other benefits as per the Labour Act. The petitioners are the workers of the respondent department but they (petitioners) are wrongly shown to be the workers of contractor as the department used to send the petitioners from one place/centre to another. It is further averred that the work and conduct of the petitioners always remained up to the satisfaction of the officials of the respondent and even,

they have completed 240 days in each calendar year. Against this back-ground, a prayer has been made for setting aside the termination of the petitioners w.e.f. 7.8.2009 with direction to give all the consequential service benefits, including backwages.

3. The respondent contested the claim petition by filing reply wherein various preliminary objections qua maintainability and that the petitioners have no locus-standi to file the claim petition against it has been raised. On merits, it has been asserted that petitioner no.1 was never engaged by the department. In fact, petitioners no. 2 to 4 were the employees of petitioner No.1, who had engaged petitioners No.2 to 4 to perform seasonal work in the respondent department. Since, vide letter dated 28.3.2006, the petitioner no.1 had undertaken the liabilities of every kind pertaining to petitioners No. 2 to 4, hence, the respondent is not responsible for any claim. It is further asserted that the department had given full & final payment to petitioners after their reengagement, as per existing rates of per hours, in compliance to the directions of Hon'ble High Court. Since, the petitioners' no. 2 to 4 had been engaged through contractor i.e petitioner no.1 to do the seasonal work, hence, the question of termination of their services does not arise. Consequently, the respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioners reaffirmed their allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 8.1.2013.

1. Whether the services of petitioners were terminated without complying the mandatory provisions of Industrial Disputes Act, 1947? OPP…….

2. If issue no.1 is answered in affirmative, to what service benefits the petitioners are entitled to? OPP……..

3. Whether this petition is not maintainable? OPR……..

4. Whether the petitioners have no locus standi to file and maintain this petition? OPR……

5. Relief.

6. Besides having heard the learned counsel for the parties, I, have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:

Issue no. 1	Yes.
Issue no. 2	Entitled for reinstatement with seniority and continuity but without back-wages.
Issue no.3	No.
Issue no.4	No.

Relief. Reference answered in favour of the petitioners and against the respondent, per operative part of award.

REASONS FOR FINDINGS

Issue no.1.

8. The learned counsel for the petitioners contended that the petitioners were engaged as workers by the respondent and all of them had worked continuously till 6.8.2009 and thereafter, on 7.8.2009, their services have been terminated illegally without complying with the mandatory provisions of the Act as neither any notice was served upon them nor any compensation was paid in lieu of the notice and therefore, he contended that the impugned termination of the petitioners w.e.f. 7.8.2009 be set-aside.

9. On the other hand, Ld. Deputy DA for the respondent contended that petitioners were never engaged by the respondent department. He further contended that the petitioner no. 2 to 4 were the employees of the contractor i.e petitioner no.1, who used to engage them during seasonal work and as such the respondent is not responsible for any claim of the petitioners and there is no question to comply with the provisions of the Act.

10. Therefore, the evidence of the parties has to be examined and scrutinized in the light of the aforesaid contentions of the learned counsel for the parties. The petitioners have examined Five Ex. PW-1/A to Ex. PW-1/J. In the cross-examination, he has stated that the work was being taken from the petitioners by the department but petitioners no. 2 to 4 have been engaged through contractor i.e petitioner no.1 to do the seasonal work. The payments to the petitioners no. 2 to 4 had also been made through petitioner no.1. The respondent department had taken the work from the petitioners as per the requirement and availability of work.

11. Petitioner no.1, Shri Dev Raj has appeared into the witness box as PW-2, to depose that he had been engaged by the department in the month of March, 1996 and worked as such till 6.8.2009 continuously. On 7.8.2009, his services had been terminated by the respondent department. Thereafter, he approached the respondent for his reinstatement but of no avail. In compliance to the order passed by the Hon'ble High Court in CWP no. 3000/09, he had been re-engaged w.e.f. 7.1.2010. Since, vide Ex. PW-2/B, he had filed a complaint before the Labour Inspector, therefore, his services had been terminated orally by the respondent. Vide letter Ex. PW-2/C, the Labour Inspector had directed the respondent, not to violate the provisions of labour laws. Vide order Ex. PW-1/A and Ex. PW-1/B, the Ld. JMIC, Paonta Sahib, had punished the respondent for the violation of labour laws. Earlier, S/Shri Dharam Singh and Devender had also been dis-engaged by the respondent but on the direction of Labour Court, they had been re-engaged. Neither he had worked as contractor with the respondent department nor engaged/deputed other petitioners i.e petitioner no.2 to 4, to do the work of respondent department. Juniors to him are still working with the department. His EPF was being deducted w.e.f. 1996. From the date of his termination i.e w.e.f. 7.8.2009 to 7.1.2010, he had not worked anywhere. In the cross-examination, he hasdenied that he alongwith other petitioners were not the employees of respondent and that Sharafat Ali, Firoz Khan and Rukmani Devi were his employees. He further denied that Ex. RP-1 to Ex. RP-10, had been written at his instance but explained that the same had been written at the instance of officials being formality. He has admitted that w.e.f. 7.1.2010, he had been paid all the wages by the respondent.

12. PW-3, Shri Sharafat Ali has deposed that on 3.10.2007, he was engaged in the office by the respondent and worked till 6.8.2009. On 7.8.2009, he had been terminated without serving any notice and paying retrenchment compensation. He had approached the respondent for his

reinstatement but the needful was not done by the respondent. In the cross-examination, he has denied that he was engaged by petitioner no.1 and that he was the employee of petitioner no.1.

13. PW-4 Shri Firoz Khan and PW-5 Ms. Rukmani Devi corroborated the entire version as made by PW-3 Shri Sharafat Ali including that PW-4 Shri Firoz Khan was engaged in the month of August, 2006 as driver and PW-5 as Sales Girl in the month of April, 2008.

14. To rebut the case of the petitioners, Shri Het Ram has stepped into the witness box as RW-1 and deposed that w.e.f. the year, 2002, the workers are being engaged through contractor to dothe seasonal work and as per the requirements, the tenders for the engagement of seasonal labourers, on hourly basis, were invited and petitioner no.1 Dev Raj also provided the labourers to do the seasonal work. Prior to 2002, Shri Dev Raj had worked with the department for 89 days as seasonal labourer. After the year, 2002, Shri Dev Raj was never engaged as seasonal worker by the department. Ex. RA, is the copy of decision taken for the engagement of seasonal labourers through contractor. Being a contractor Shri Dev Raj had provided labourers for seasonal work to the department vide Ex. RA/1 on hourly basis. Quotation Ex. RP/II had been submitted by the petitioner no.1. Neither the petitioner no.1 nor other petitioners had been engaged by the respondent. In the cross-examination he has admitted that petitioner no.1 had worked as worker with the respondent w.e.f. 1995 but explained that he had worked on hourly basis. He further admitted that all the petitioners have been removed from service w.e.f. 7.8.2009.

15. I have considered the respective contentions of both the Ld. Counsel for the parties and also scrutinized the entire record of the case.

16. After the close scrutiny of the record of the case, it has become clear that after the alleged termination/dis-engagement of the petitioners w.e.f. 7.8.2009, they had approached the Hon'ble High Court by filing CWP No. 3000 of 2009, wherein the Hon'ble High Court vide order dated 2.1.2010, directed the respondent to reengage the petitioners. The relevant portion of the aforesaid order of the Hon'ble High Court reads as under:

> **"Consequently, respondent no.4 is directed to reengage the petitioners forth-with. However, reengagement of the petitioners shall abide by the out-come of the proceedings initiated under the Industrial Disputes Act, 1947".**

17. It is not disputed that after the order passed by the Hon'ble high Court, the petitioners have been re-engaged by the respondent w.e.f. 7.1.2010. Now, this Court has to ascertain whether the dis-engagement of the petitioners w.e.f. 7.8.2009, is in violation of the provisions of the Act or they had been engaged through contractor i.e petitioner no.1, to do the seasonal work. The respondent has brought, on record, the photocopy of letter dated 26.11.1996, Ex. RA, for the execution of seasonal horticulture activities/seasonal work through contractor. According to the respondent, they had invited tenders as per Ex. R-2, for the execution of work, through contractor and petitioner no.1 being a contractor had agreed to work/provide the workers to the respondent as per letters Ex. R-1, Ex. RP-II and Ex. RP-3 and vide letters Ex. RP-4, Ex. RP-5 and Ex. RP-9, the petitioner no.1, requested the respondent for the enhancement of wages of the workers. The respondent had also placed, on record, the bills raised by the petitioner no.1, Ex. RP-6 to Ex. RP-8 and Ex. RP-10 to Ex. RP-13. However, these documents are not sufficient to prove that petitioners no.2 to 4 were engaged by petitioner no.1 as nothing is mentioned in these documents that petitioners no. 2 to 4 have been engaged by petitioner no.1. Moreover, in these documents the names of petitioner no.2 to 4 have also not been reflected. There is also no material placed on record, by the respondent to show that the wages to the petitioners no.2 to 4 were directly being paid by petitioner no.1.

18. It is pertinent to mention here that the petitioner no.1 was working with the respondent from the year, 1996, whereas petitioner no.2 was working w.e.f. August, 2006. However, the respondent has invited tenders, as per Ex. R-2, for the execution of work, through contractor only on 30.4.2007. Except, Ex. R-2, the respondent has failed to bring, on record, the copy of the tenders which were allegedly invited by them prior to 30.4.2007, for the execution of work through contractor. The respondent has also failed to prove, on record, that any contract/agreement which might have been executed between the petitioner no.1 and respondent for providing the workers to respondent no.1. Moreover, the respondent has failed to prove, on record, that petitioner no.1 was a registered contractor which fact has also been admitted by RW-1 in cross-examination that the petitioner no.1 is not a registered contractor and he further admitted that the department does not give contract to any contractor who is not a registered contractor. As such when, petitioner no.1 was not having the licence of contractor, the version of the respondent that the petitioner no.2 to 4 had been employed by him is totally wrong and false. Not only this, Shri Het Ram (RW-1) has also admitted in his cross-examination that the petitioner Firoz Khan being driver had filled in the log-book of vehicles no. HP17-A 4078 and HP17-A 4489. He further admitted that in log book there is no mention regarding the engagement of petitioner Firoz Khan through contractor. If the petitioner no. 3 Firoz Khan, was the employee of petitioner no.1, there was no occasion for him to fill the log book of the vehicles of respondent.

19. Therefore, the perusal of entire evidence which has come, on record, shows that the petitioners no.2 to 4 were never engaged by the petitioner no.1 being contractor as contended by the learned counsel for the respondent and as such I have no hesitation in holding that they have been employed/engaged by the respondent to do the work.

20. Now, the question arises as to whether the services of petitioners have been terminated by the respondent in an illegal manner or not. All the petitioners have categorically stated that they had completed 240 days in a calendar year preceding to their termination and neither any notice was served upon them nor any compensation was paid in lieu of notice. When regard is given to the crossexamination of RW-1 Shri Het Ram he has categorically admitted that all the petitioners have completed 240 days and when their services had been terminated w.e.f. 7.8.2009, no notice and compensation was given to them. Thus, the admission of RW-1 is sufficient to establish that all the petitioners have completed 240 days in a calendar year preceding their termination. At this juncture, it would be relevant to re-produce section 25-F of the Act, which reads as under:

25-F. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)

21. The provisions of section 25-F of the Act lays down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in law. However, in the present case, the perusal of the record shows that the respondent has not complied with any of the conditions of section 25-F as enumerated in clause (a) to (c), precedent to the retrenchment of petitioners. Therefore, I have no hesitation in coming to the conclusion that the termination of services of the petitioners w.e.f. 7.8.2009 amounts to illegal retrenchment contrary to the mandatory provisions of section 25-F of the Act. Accordingly issue no.1 is decided in favour of petitioners and against the respondent.

Issue no. 2.

22. Since I have held under issue no.1 above that the termination of services of the petitioners by the respondent without following the provisions of the Act is improper, illegal and unjustified, hence, the petitioners are held entitled to reinstatement in service along-with seniority and continuity.

23. Now, the question which arises for consideration, before this Court is as to whether the petitioners are entitled to full back wages as contended by the learned counsel for the petitioner. In (2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza, the Hon'ble Supreme Court has held that "once the order of termination of services of an employee is setaside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement". It has further been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that "full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must no be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry".

24. In the present case, all the petitioners while appearing in the witness box have stated with one voice that after their termination i.e w.e.f. 7.8.2008 till their reinstatement i.e 7.1.2010, they were not gainfully employed. However, except for the bald statements of the petitioners, there is no other cogent evidence on record led by the petitioners that they were not gainfully employed during the aforesaid period. The petitioners were under an obligation to prove this fact by leading cogent evidence that they were not gainfully employed after their retrenchment. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma that :

> "16……..**When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim……..**"

25. In the present case, as observed hereinabove, the petitioners have failed to discharge their burden by placing any material on record that they were not gainfully employed after their termination i.e. w.e.f. 7.8.2009 till 7.1.2010 on which date they were reinstated by the respondent on the basis of order passed by the Hon'ble High Court. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioners are not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioners and against the respondent.

Issue no. 3

26. In support of this issue, neither any evidence was led by the respondent nor it was pressed during the course of arguments. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of the petitioners and against the respondent.

Issue no. 3.

27. The respondent has taken a specific plea that the services of the petitioners were engaged through contractor, hence, they have no locus standi to file and maintain the present petition. Since, I have held under issue no.1 that all the petitioners have been engaged by the respondent and their services had also been terminated by it, they got locus standi to file and maintain the present petition. Accordingly, issue no.4 is decided against the respondent and in favour of petitioners.

RELIEF

As a sequel to my above discussion and findings on issue no.1 to 4, the claim of the petitioners succeeds and is hereby allowed and the petitioners are ordered to be reinstated in service forthwith with seniority and continuity but without back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 3rd day of September, 2015.

(Parveen)

(SUSHIL KUKREJA)
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL CUMLABOUR COURT, SHIMLA, (H.P)

Ref No. 52 of 2007.
Instituted on. 27.6.2007.
Decided on 8.9.2015.

Manoj Kumar Singh S/o Shri Chander Bhan Singh through Mukul Tea Stall, Village Ballawali, Sai Road, Near Lodge, Dharamkanta, Baddi, Tehsil Nalagarh, District Solan, H.P.
……Petitioner.

Vs.

The General Manager, M/s Sintex Industries Ltd. Plastic Division, Industrial Area, Baddi, Tehsil Nalagarh, District Solan, H.P. *……Respondent*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Dinesh Banot, Advocate.

For respondent : Shri Rahul Mahajan, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

"Whether the termination of services of Shri Manoj Kumar Singh S/o Shri Chander Bhan Singh workman by the management of **M/s Sintex Industries Ltd. Plastic Division, Industrial Area, Baddi, Tehsil Nalagarh, District Solan, H.P w.e.f. 18.1.2005, without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to*?"***

2. Briefly, the case of the petitioner is that he was appointed as Machine Operator by the respondent in July 2001. He had performed his duties to the entire satisfaction of the respondent without any complaint. In January, 2005, his services had been terminated, illegally, in violation of the provisions of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as Act). In fact, he (petitioner) had gone to his home after obtaining leave for a month w.e.f. 18.12.2004 to 17.1.2005. On 18.1.2005, when he went to join his duties after availing one month leave, he was not allowed to join his duties and as such his services had been terminated by the respondent in an illegal manner without complying with the provisions of section 25-F of the Act. He had worked for more than 240 days in each calendar year from the date of his appointment. Since, his services had been terminated in violation of the provisions of the Act, a prayer for his reinstatement with all the consequential service benefits including back wages, has been made.

3. The respondent contested the claim of the petitioner by filing reply wherein preliminary objections qua maintainability, relationship of employee and employer between the parties and the petitioner being gainfully employed have been raised. On merits, it has been asserted that there is no employee-employer relationship between the petitioner and the respondent. The petitioner was employed through contractor as per the provisions of Contract Labour (Regulation and Abolition) Act, 1970 and H.P Contract Labour (Regulation and Abolition) Rules, 1974 (hereinafter referred as Rules/Act). The petitioner intentionally and deliberately had not made the contractor as party. It is further averred that the petitioner had been engaged, through contractor, to do the manual work only, who had at no point of time worked as operator. Since, the petitioner was not the employee of the respondent management, hence, no question of violation of section 25-F of the Act, arises. Consequently, respondent prayed for the dismissal of the petition.

4. No rejoinder was filed. On the pleadings of the parties, the following issues were framed on 2.5.2011.

1. Whether the termination of the services of the Shri Manoj Kumar petitioner by the management of M/s Sintex Industries Ltd., Baddi, is in violation of the provisions of Industrial Disputes Act, 1947? OPP…….

2. Whether Manoj Kumar was employed through contractor as a helper as per the provisions of Contract Labour (regulation and Abolition) Act, 1970 and HP Contract Labour (Abolition and Regulation) Rules, 1974? If so, its effect? OPR……

3. Whether the petitioner is gainfully employed? OPR……

4. Whether the petition is bad for non-joinder of necessary party? OPR……

5. Relief.

5. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 No.

Issue no.2 Yes.

Issue no.3 Becomes redundant.

Issue no.4. Decided accordingly.

Relief. Reference answered against the petitioner and in favour of respondent, per operative part of award.

REASONS FOR FINDINGS.

Issues no. 2 & 4.

7. Being interlinked and co-related, both these issues are taken up together for discussion and decision. First of all, I proceed to decide these issues, as the respondent in its reply has taken a specific stand that the petitioner never remained the employee of the respondent, and there exists no employee and employer relationship between the parties and in-fact the services of the petitioner had been engaged through contractor. On the other hand, the case of the petitioner is that he was given appointment by the Plant Manager of respondent company and he was the employee of respondent.

8. The petitioner stepped into the witness box as PW-1 and tendered his affidavit in examination-in-chief, wherein he has stated that he was given appointment by the Plant Manager of the respondent company and he was working with the company since July, 2001 as machine operator. He had worked with the respondent company till January, 2005, when his services had been terminated in violation of the provisions of section 25-F of the Act. He had worked for more than 240 days with the respondent and no notice had been issued to him for his termination. The copy of ESI Card is Ex. PA. In cross-examination, the petitioner has stated that he cannot say that in Ex. PA, the name of respondent company is not mentioned as his employer but denied that he was the worker of M/s Apex ManagementConsultant, Baddi. He admitted that he had not annexed his appointment letter and the same cannot be produced by him. He also denied that he was being paid wages and his ESI contribution was being borne by M/s Apex Management Consultant, Baddi.

9. PW-2, Shri Lal Babu has also tendered his affidavit, in examination-in-chief wherein he has supported the entire version as made by the petitioner. In cross-examination, he has denied that the petitioner had not taken the leave from the Manager of the respondent company.

10. On the other hand, Shri Ashish Kumar, Personnel Manager, M/s Sintex Industries Ltd., appeared into the witness box as RW-1 and brought the summoned record pertaining to Billanwali unit. The copy of adult workers register is Ex. RA/1. The copy of PF returns from the year, 2004 to

2006 is Ex. RA/2. The record of ESI is Ex. RA/3 and Ex. RA/4 is the copy of registered certificate. The record pertaining to salary from the year, 2004 to December, 2005, is Ex. RA/5. He further stated that the unit is now closed. The information about the closure of the unit had also been sent to Labour Commissioner, Joint Labour commissioner and Labour Officer, vide Ex. RA/6 to Ex. RA/9. In cross-examination, he had admitted that the ESI card of the petitioner is Ex. PA. He had no knowledge that the petitioner was engaged by the Plant Manager in the year, 2001. He has denied that the register Ex. RA/1 has been falsely prepared by them later-on and that the name of the petitioner has been intentionally removed from the register. He denied that the petitioner had taken leave from 18.12.2004 to 17.1.2005.

11. RW-2, Shri Abhey Kumar Saxena, Factory Manager has tendered his affidavit, Ex. RW-2/A wherein he has categorically stated that there exists no employee-employer relationship between the parties. The petitioner was employed through contractor, as a helper and the contribution under EPF and MP Act, 1952, and wages were being paid by the contractor to petitioner. In the crossexamination, he stated that petitioner was working in the factory through contractor. He denied that the petitioner was directly engaged by the respondent.

12. Shri Lalit, Personnel Officer stepped into the witness box as RW-3 to depose that he has brought the muster roll register, the copy of which is Ex. RW-3/A. Ex. RW-3/B, is the copy of payment of wages register. In both the registers, the name of Manoj Kumar S/o Shri Prem Chand also reflects. The copy of his authority letter is Ex. RW-3/C. In the cross-examination, he has stated that the contract between respondent and AMC Enterprises has come to an end and now the work has been allotted to PMS Contractor.

13. I have considered the respective contentions of both the Ld. Counsel for the parties and also scrutinized the entire record of the case.

14. After the closer scrutiny of the record, it has become clear that the petitioner has not been able to establish that he was on the roll of the respondent company and that his retrenchment by the respondent is in violation of the provisions of Industrial Disputes Act, 1947. It was for the petitioner to bring on record the cogent and satisfactory evidence about his appointment with the respondent. The petitioner, admittedly, has not adduced in evidence any such appointment letter or document to warrant such inference thereby making it evident that he was the employee of respondent company. No doubt, the petitioner while appearing in to the witness box as PW-1, has categorically stated that ESI card Ex. PA had been issued by the respondent company but when regard is given to Ex. PA, it appears that the same had been issued by the ESI authorities, however, the name of the respondent company is not mentioned therein in the capacity of employer of the petitioner. Hence, no benefit can be derived by the petitioner from the ESI card Ex. PA. The petitioner has failed to prove on record any appointment letter which might have been issued to him by the respondent company or any other documentary evidence which could show that he was the employee/worker of the respondent company. Not only this, when regard is given to the documentary evidence in the shape of Ex. RA/1 (adult worker register), Ex. RA/2 (Form-6-A, employees provident fund scheme), Ex, RA/3 (ESI return of contribution) and Ex. RA/5 (PF and pension statement), produced on behalf of the respondent company, the name of the petitioner does not appear as the employee/worker of the respondent company.

15. On the other hand, the respondent has proved, on record, by examining RW-3 Shri Lalit, the muster roll register, Ex. RW-3/A, payment of wages register w.e.f. Jan., 2002 to March, 2005, Ex. RW-3/B of the contractor i.e M/s Apex Management Baddi. From the perusal of aforesaid documents, it has become clear that the name of the petitioner is mentioned in Ex. RW-3/A and Ex. RW-3/B and M/s Apex Management, Baddi, is recorded as the employer of the petitioner and the wages are also being paid to him by contractor i.e M/s Apex Management Baddi

and the petitioner in token of having received the amount had also signed the wages register. Hence, the direct evidence in the shape of aforesaid documents is clinching to substantiate that the petitioner was the worker of the contractor i.e M/s Apex Management, Baddi and was not engaged by the respondent company. Therefore, the relationship of employer and employee between the petitioner and respondent has not been established. Hence, in view of the entire evidence, as discussed above, I have no hesitation in holding that the petitioner was engaged as helper by the respondent company through contractor.

16. From the perusal of the record, it has become clear that the petitioner has not impleaded M/s Apex Management, Baddi as a party in the statement of claim which has been filed consequent upon the reference having been made to this Court by the appropriate government. The respondent company has taken a specific plea in its reply that the petitioner had been engaged through contractor M/s Apex Management, Consultant, Near Bus Stand, Baddi, Solan, H.P. Therefore, since the respondent company through its reply had made known to the petitioner that his services had been engaged by a contractor and in support thereof the respondent also filed documents, it was incumbent upon the petitioner to have taken necessary steps to get impleaded M/s Apex Management, Baddi as a party, even, if initially he has filed his claim only against the respondent company. Therefore, I have no hesitation in holding that the petition is bad for non-joinder of necessary party.

17. Accordingly both these issues are answered in favour of the respondent and against the petitioner.

Issue no. 1.

18. The termination of the services of the petitioner as per my findings on issues no.2 & 4, is not proved to be in violation of the provisions of the Act, hence, the petitioner is not entitled for any relief as prayed. Therefore, this issue is answered against the petitioner and in favour of respondent.

Issue no. 3.

19. In view of my findings under issues no. 2 & 4 above, this issue becomes redundant.

RELIEF

In the result, the claim of the petitioner fails and is hereby dismissed. The reference is answered against the petitioner and in favour of the respondent and as such the petitioner is not entitled to any relief of service benefits as prayed. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 8th day of September, 2015.

(Parveen)

(SUSHIL KUKREJA)
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUMLABOUR COURT, SHIMLA, (H.P).

Ref No. 27 of 2009.
Instituted on. 4.4.2009.
Decided on 9.9.2015

Parmanand, Room No. 87, Bishop Cotton School, Shimla, H.P. ……..*Petitioner.*

Vs.

The Head Master, Bishop Cotton School, Shimla-2. ……..*Respondent*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Niranjan Verma, Advocate.

For respondent : Shri Ranbir Chauhan, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

"Whether action of employer i.e The Head Master, Bishop Cotton School, Shimla-2, HP to terminate the services of Shri Parmanand w.e.f. 1.11.2007 without any enquiry and paying compensation of Rs. 25000/- only, whereas worker alleged that he had worked for 12 years continuously, is proper and justified? If not, what relief of service benefits, seniority, compensation the above workman is entitled to?"

2. The petitioner has filed the claim stating therein that he was working as nonresident masalchi with the respondent School since 1997 and was regularized in the year, 2000 as per the appointment letter dated 30.10.2000. The petitioner had worked till 1.11.2007 to the entire satisfaction of the respondent. The services of the petitioner had been terminated without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred as Act) as well as holding any enquiry, which is illegal. A letter for vacating the quarter allotted to the petitioner had been issued by the respondent whichwas duly replied by him and the respondent while terminating the services of the petitioner issued a letter dated 1.11.2007 referring that there would be no necessity of holding a separate domestic enquiry in the matter. Hence, the claim was filed with the prayer that termination of the petitioner be declared illegal, null & void and he be reinstated with all the consequential service benefits including back wages.

3. The respondent contested the claim by filing a reply wherein preliminary objections as to barred by limitation, maintainability, jurisdiction, cause of action and barred by the principle of res-judicata were raised. On merits, respondent admitted that the petitioner had worked as mashachi in the School w.e.f. 30.10.2000 to 1.11.2007 but denied that the petitioner rendered his services faithfully and satisfactorily and that his services had been terminated illegally. It is averred that the petitioner was granted a licence to use accommodation, in quarter no. 87, without any charges which was terminated vide letter dated 26.9.2007 whereby he was asked to vacate the premises by 4th October, 2007 and thereafter the time was extended upto 31.10.2007 to vacate the accommodation but the petitioner failed to vacate the same within stipulated date. The suit for possession of quarter no. 87 BCS was filed against the petitioner which was decreed by the Ld. Civil Judge (Senior Division) Court No.2, Shimla along-with use and occupation charges.

Thereafter, letter no. 367 dated 27.10.2007, was issued to the petitioner notifying that there would be no necessity to hold a separate domestic enquiry for proved continued misconduct on the part of the petitioner and his services were discharged without any further notice in case the petitioner failed to comply with the order dated 26.9.2007 on or before 31.10.2007 and that salary of three month's would be paid to the petitioner in lieu of notice period. It is further averred that the petitioner did not comply with the order and as such the respondent was compelled to finalize and confirm the decision of discharging the petitioner from service for proved continued misconduct on his part. Thereafter, considering all the facts and circumstances, the respondent issued notice under section 25-F of the Act and complied with the mandatory provisions as mentioned in the Act. The retrenchment has been done properly complying with the mandatory provisions of the Act. Consequently, respondent prayed for the dismissal of the petition.

4. No rejoinder was filed. On the pleadings of the parties, the following issues were framed on 28.9.2010.

1. Whether the termination of the services of the petitioner w.e.f. 1.11.2007 without enquiry and by paying compensation of Rs. 25,000/- only is illegal and improper as alleged? OPP…….

2. If issue no.1 is proved, to what service benefits the petitioner is entitled to? OPP……

3. Whether this petition is bared by res-judicata as alleged? OPR…….

Relief.

5. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 Yes.

Issue no.2 Entitled to reinstatement with seniority and continuity but without back wages.

Issue no.3 Not proved.

Relief. Reference answered in favour of the petitioner and against the respondent, per operative part of award.

REASONS FOR FINDINGS

Issue no. 1

7. For the petitioner, it has been vehemently argued that since no domestic enquiry had been conducted against the petitioner and his services had been terminated without following the mandatory provisions of section 25-F of the Act, despite the fact that he had worked with the respondent since 1997 till 1.11.2007, therefore, his termination is totally illegal and against the provisions of the Act.

8. On the other hand, it has been urged on behalf of the respondent that the services of the petitioner had been terminated legally for proved continued misconduct on his part by serving a notice under section 25-F of the Act and by paying compensation in the sum of Rs. 25,908/ equivalent to three month's salary in lieu of the notice period.

9. The petitioner stepped into the witness box as PW-1 to depose that in the year, 1997, he was engaged in Bishop cotton School and his services had been regularized, w.e.f. 1.11.2000 as non-resident masalchi vide appointment letter Ex. PW-1/A and worked as such till the year, 2007. On 1.11.2007, a memo no. 367 for terminating his services, illegally, had been issued to him vide Ex. PW-1/B. On 18.7.2007, a memorandum was given to the management through workers union requesting therein for the implementation of settlement dated 9.3.2006, arrived at between the workers union and management before Labour-cum-Conciliation Officer, Shimla upon which the management had terminated his services illegally. In the cross-examination, he admitted that quarter No. 87 had been allotted to him and denied that he had not been performing his duties sincerely. He admitted that notice Ex. R-1 had been given to him in order to vacate the quarter on or before 4.10.2007. The notice was replied by him vide Ex. R-2 and thereafter he was given time till 31.10.2007 to vacate the quarter. He denied that he had not vacated the quarter. He also admitted that notice Ex. PW-1/B, had been received by him. He expressed his ignorance that a suit for possession of room no. 87 was also filed against him. He denied that he violated the notices dated 26.9.2007 and 31.9.2007, issued by the Head Master and that his services had been terminated on the basis of misconduct.

10. On the other hand, RW-1, Shri Rajiv Mehrotra, stated that he had been authorized to depose by the Head Master vide Ex. R-A. The petitioner had been appointed as non-resident masalchi, in the year, 2000, on probation by the respondent and he was allotted quarter no. 87 in the school premises. The respondent school has its own Rules and Regulations, on which basis, the employees were given appointments and their terms and conditions are also governed by the same. The allotment of the house of petitioner was cancelled as per Rules, Regulations and By-laws and if someone does not follow Rules and Regulations, Head Master is competent to take action against him. Since, the petitioner was not performing his duties of twenty four hours as per notice dated 26th Sept. 2007, he was asked to vacate quarter no. 87 but the same was not vacated by him and thereafter he was issued another letter whereby he was asked to shift in quarter no.14 by vacating quarter no. 87 but of no avail. Since, the petitioner had failed to comply with the order issued by the Head Master, his (petitioner) services had been terminated on 1.11.2007 as per Bye-laws, Rules and Regulations and also as per the provisions of the Act. In the cross-examination, he denied that the duty hours of the petitioner being maslachi were 24 hours but explained that his duty hours were fixed for eight hours. He further stated that before terminating the services of the petitioner neither any chargesheet was served nor they conducted any enquiry.

11. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof it has become clear that the petitioner had worked as Masalchi with the respondent School on regular basis w.e.f. 30.10.2000 till 31.10.2007. Although the petitioner had been asked to vacate quarter no. 87, but the respondent has failed to show that before terminating his services vide letter dated 1.11.2007, Ex. PW-1/B, any domestic enquiry had been conducted against him in order to prove the alleged misconduct. It has been admitted by RW-1 Shri Rajiv Mehrotra, that before terminating the services of the petitioner neither any chargesheet was served upon him nor any enquiry was conducted. Since, the petitioner had been in continuous service of the respondent w.e.f. 30.10.2000, his services could not have been terminated as per letter dated 1.11.2007, copy of which is Ex. PW-1/B, on the plea of proved continuous misconduct. It is settled legal proposition that a workman, against whom misconduct is alleged, cannot be dismissed or discharged unless a proper domestic enquiry is held against him in respect of the alleged misconduct. Even, if the alleged misconduct is proved against the workman, he cannot be dis-charged or dismissed from

service unless he has been afforded opportunity of being heard before initiating any action against him by the employer/respondent. No doubt, the learned counsel for the respondent contended that under the Rules of the school, the Head Master is competent to terminate the services of the petitioner without holding a separate domestic enquiry for proved continued misconduct on the part of the petitioner. However, the Rules of the school have not been placed on record by the respondent. Moreover, this contention of the learned counsel for the respondent cannot be accepted because I am of the firm opinion that the Rules of the school must be in conformity with the statute and principles of natural justice other-wise the same would be arbitrary, unjust and unfair. A reasonable opportunity of being heard should have been afforded to the petitioner before terminating his services. In *D. K Yadav Vs. M/s J.M A Industries Ltd. as reported in 1993-1 Supreme Court Service Law Judgments -221*, the Hon'ble Apex Court has held as under:

> *"Reasonable opportunity be given to the employee concerned to put forth his case and proper enquiry be held before terminating his service."*

In the instant case, admittedly, the petitioner was never asked to answer any charges as no chargesheet was issued to him and no enquiry was held before terminating his service, on the basis of alleged misconduct. Therefore, the termination order dated 1.11.2007, without conducting any enquiry and without affording reasonable opportunity of being heard to the petitioner is in utter violation of the principles of natural justice and is hereby set aside.

12. Admittedly, the petitioner had worked with the respondent, on regular basis, w.e.f. 30.10.2000 till 1.11.2007 and he has completed more than 240 days in each calendar year, preceding his termination. In the reply, filed on behalf of the respondent it has been averred that the respondent issued notice under section 25-F of the Act and the learned counsel for the respondent also argued that before terminating the services of the petitioner, the respondent issued a notice under section 25-F of the Act and also paid him three months' salary in lieu of the notice period and thus complied with all the mandatory provisions of the Act. However, the perusal of the notice Ex. PW-1/B shows that the petitioner has only been paid a salary of three months in lieu of the notice period which is prescribed in the clause (a) of section 25-N of the Act but clause (b) of section 25-N of the Act has not been complied with. Neither any material has been placed on record nor there are any pleadings to the effect as to whether the respondent had employed more than hundred workmen for the preceding twelve months in order to ascertain as to whether in the given case, the provisions of section 25-N are attracted. However, assuming that the provisions of section 25-F are attracted to the present case as per the case of respondent then at this juncture, it would be relevant to re-produce section 25-F of the Act, which reads as under:

25-F. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN.— No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(d) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(e) the workman has been paid, at the time of retrenchment compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and

(f) notice in the prescribed manner is served on the appropriate government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)

13. The provisions of section 25-F of the Act lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent has not complied the conditions of section 25-F as enumerated in clause (b) and (c), precedent to the retrenchment of petitioner. In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd., Vs. Mackinnon employees Union, the Hon'bel Apex Court has held as under:

> "34. ……The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant-Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law."

14. In the present case also no evidence has been produced by the respondent to prove that the petitioner has been paid compensation equivalent to the fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months as per clause (b) of section 25-F. Further, with regard to the provisions of clause (c) of the section 25-F, the respondent has also failed to produce any evidence which could go to show that the notice was served in the prescribed manner on the appropriate government. Therefore, it has become clear that the respondent has not complied with the conditions (b) and (c) of the section 25-F, which are mandatory in nature.

15. Hence, In view of the law laid down by the Hon'ble Supreme Court (supra) and my foregoing observations, I have no hesitation in holding that the termination/disengagement of the services of the petitioner by the respondent without enquiry and by paying compensation of Rs. 25908/- only is violative of the provisions of Industrial Disputes Act, 1947 as well as principles of natural justice as no opportunity of being heard was afforded to the petitioner before terminating his services. Hence, thetermination order Ex. PW-1/B is set aside and quashed. Accordingly, this issue is answered in favour of the petitioner and against the respondent.

Issue no. 2

16. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. The petitioner neither pleaded nor proved that he was not gainfully employed after his retrenchment. In (2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza, the Hon'ble Supreme Court has held that "once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement". It has further been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that "full back wages cannot be granted

mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry".

17. In the present case, the petitioner only prayed for his reinstatement with backwages in his statement of claim and in his statement as PW-1. The petitioner was under an obligation to plead and prove by leading cogent evidence that he was not gainfully employed after his retrenchment. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma that :

"16……..**When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim……..**"

18. In the present case, as observed hereinabove, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination i.e. w.e.f. 1.11.2007. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondent.

Issue no. 3

19. From the careful perusal of the record, there is nothing to suggest that the petition is barred by res-judicata. Hence, this issue is decided against the respondent.

RELIEF

For the reasons recorded hereinabove, the claim of the petitioner is partly allowed and he is ordered to be reinstated in service forthwith with seniority and continuity but without back wages and as such the reference is answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 9th day of September, 2015.

(Parveen)

(Sushil Kukreja)
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUMLABOUR COURT, SHIMLA, (H.P)

Ref. No. 128 of 2010.
Instituted on.4.12.2010
Decided on 14.9.2015.

Rajinder Kumar S/O Shri Chajju Ram, R/O Village Dholghat, P.O. Sai, Tehsil Baddi, District Soaln H.P. ……*Petitioner.*

Vs.

The Factory Manager M/s Aar Aar Casting Limited (Near Power House), Village Jharmajri, P.O Barotiwala, District Solan, HP. ……*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, AR.
For respondent : Shri Kamal Dev, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication:

"Whether verbal termination of the services of Shri Rajinder Kumar S/O Shri Ghajju Ram Driver by the Management of M/S Aar Aar Casting Limited, (Near Power House), Village Jharmajri, P.O. Barotiwala, District Solan, H.P. w.e.f. 26.05.2009 without serving charge sheet, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, services benefits and relief the above named workman is entitled to?"

2. In nutshell the case of the petitioner is that he commenced his service/career with the respondent as driver during the month of March, 2004 and remained as such till 26.5.2009, when his services were illegally terminated without any notice and compensation. He was paid Rs. 3000/- per month as less than the minimum wages notified for the category of drivers by the appropriate government. The petitioner was not granted weekly rests and has been working for as long as 12 hours every-day without any remuneration. The petitioner had worked for more than 240 days in every calendar year preceding his termination. It is averred that since the termination/dismissal orders for removing the petitioner from service are not speaking orders and as such the same are null, void and inoperative, which amounts to unfair labour practice and further colorable exercise of the employer's right as the petitioner was terminated for unknown reasons as he was neither served with any chargesheet nor any enquiry was held before terminating his services. It is further averred that after the termination of the petitioner a new hand Shri Radhey Shaym was employed and as such respondent violated the provisions of section 25-G & H of the Act. Hence, the action of the respondent to terminate the services of the petitioner is biased, unfair and unreasonable. It is further averred that the petitioner had not been paid his earned wages for the month of May, 2009. Against this back-ground, a prayer has been made for re-engagement of the petitioner w.e.f. 26.5.2009, with full back-wages, seniority and other consequential service benefits.

3. The respondent has contested the claim of the petitioner by filing reply wherein preliminary objection qua abandonment has been raised. It is stated that the petitioner had joined service on 1.3.2005 and left the same on his own accord on 26.5.2009 and the present petition has

been filed by the petitioner just to harass the respondent and to exploit the management for illegitimate gains. It is further stated that since the petitioner had left the job, on his own, hence, no notice was required in terms of section 25 (c). The respondent prayed for the dismissal of the petition.

4. Pleadings of the parties give rise to the following issues which were struck on 31.12.2011.

1. Whether the termination of the services of the petitioner by the respondent is in violation of the provisions of the I.D Act, 1947? OPP……..

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? OPP…..

3. Relief.

5. Besides having heard the learned counsel for the parties, I, have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Entitled to reinstatement with seniority and continuity.
Relief.	Reference answered in favour of the petitioner and against the respondent, per operative part of order.

REASONS FOR FINDINGS

Issue no.1

7. Shri J.C Bhardwaj, learned AR for the petitioner has argued with vehemence that being a driver, the services of the petitioner had wrongly been terminated by the respondent without complying with the mandatory provisions of the Act as neither any notice was served upon him nor he was paid any compensation before terminating his services. It is further contended that the petitioner was not afforded an opportunity of being heard as neither any chargesheet was served nor any enquiry was conducted before terminating his services and even junior to him namely Shri Radhye Shayam was employed and is still working with the respondent.

8. On the other hand learned counsel for the respondent has contended that the services of the petitioner had never been terminated, who, in fact, left the job on his own.

9. The petitioner while stepping into the witness box as PW-1 has stated that he had been engaged as driver in March, 2004 and worked as such continuously till 26.5.2009, on which date, his services had been orally terminated without serving any notice and paying compensation. He was paid Rs. 3,000/- as salary whereas the work was being taken from him for twelve hours. When, he requested for the enhancement of salary, he was terminated. His juniors namely S/Shri Radhey Shyam and Sanjeev Kumar are still working with the respondent. He requested many times for his reengagement but the needful was not done. He had completed 240 days in every calendar year and even in preceding twelve calendar months from the date of his termination. The copy of log book is

Ex. PW-1/A. He was terminated illegally. He was not employed anywhere. In the cross-examination, he has denied to have been engaged in the year,
2005. He has further denied to have left the job, on his own. He was receiving Rs. 3000/- as salary which amount was even less then minimum wages.

10. Shri Raghubir Singh (RW-1) has deposed that the petitioner being driver had worked with the respondent from 1.3.2005 till 2009. His attendance was marked till 2009 and thereafter, he had not come to work and remained absent. He further deposed that the salary for two months of the petitioner is still pending. The respondent never terminated the services of the petitioner, who left the job on his own. In the cross-examination, he has stated that, on record, there is no such letter which could go to show that the petitioner was called back for job. He has no knowledge that any notice was served upon the petitioner or not. He has admitted that a new driver was engaged to ply the vehicle.

11. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof it has become clear that the petitioner was engaged as driver in the month of March, 2005 by the respondent and he worked continuously as such till 26.5.2009 which fact has also been admitted by RW-1 Shri Raghubir Singh that the attendance of the petitioner was being marked till 2009. Meaning thereby the petitioner had worked for more than 240 days in every calendar year preceding his termination. The only stand which has been taken by the respondent, in its reply, is to this effect that the petitioner had left the job, on his own on 26.5.2009. However, the respondent has failed to prove on record by leading cogent and satisfactory evidence to show that the petitioner had abandoned the job on his own. By mere alleging that the petitioner had abandoned the job on his own is not sufficient to prove the stand of the respondent especially when there is nothing on record which could show that the respondent has ever sent any letter or notice to the petitioner to resume his duties. In *State of HP & Others Vs. Bhatag Ram & Another reported in Latest HLJ 2007 (HP) 903, our own Hon'ble High Court after relying upon the decision of the Hon'ble Supreme Court in G.T Lad and others V. Chemicals and Fibers India Ltd., AIR 1979 SC 582 has held that the findings of abandonment is a fact and the same has to be substantiated by leading evidence.* In the present case also, as stated above, the respondent has failed to prove the plea of abandonment by leading cogent and satisfactory evidence on record as such it cannot be said that the petitioner has abandoned the job on his own on 26.5.2009.

12. Now, adverting to the other aspect of the case, it has also come on record that junior to the petitioner Shri Radhy Shyam is still working with the respondent which fact has also been admitted by Shri Raghubir Singh (RW-1) in cross-examination, that a new driver was engaged to ply the vehicle and as such it is clear that the respondent had retained the person junior to the petitioner while terminating him which is clear cut violation of the provisions of section 25-G of the Act. I*n CWP No. 555 of 2007 incase titled as Vijay Kumar Vs. The Executive Engineer & Anr. , the Hon'ble High Court of Himachal Pradesh has held as under:*

> *".....Since the persons junior to the workman have been retained while retrenching him, he was entitled to get protection under section 25-G of the Act even though he had not completed 240 days preceding a block 12 calendar months at the time of his retrenchment".*

13. Thus, having regard to entire evidence on record and in view of above cited rulings, I have no hesitation in coming to the conclusion that the termination of services of the petitioner by the respondent w.e.f. 26.5.2009 without serving chargesheet, without holding enquiry and without complying with the provisions of the Act is improper and unjustified and thus the respondent violated the provisions of sections 25-F, 25-G & 25-H of the Act. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

Issue no.2

14. Since I have held under issue no.1 above that the termination of services of the petitioner by the respondent without following the provisions of the Act is improper, illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity.

15. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In (2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza, the Hon'ble Supreme Court has held that "once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement". It has further been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that "full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry".

16. In the present case, there is no cogent evidence on record led by the petitioner that he was not gainfully employed after his disengagement. The petitioner was under an obligation to prove this fact by leading cogent evidence that he was not gainfully employed after his retrenchment. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma that :

> "16……..**When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim……..**"

17. In the present case, as observed hereinabove, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement i.e. w.e.f. 26.5.2009. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issue no.1 & 2, the claim of the petitioner succeeds and is hereby partly allowed and as such the petitioner is ordered to be reinstated in service forthwith with seniority and continuity from the date of his illegal retrenchment i.e. w.e.f. 26.5.2009. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Hence, the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 14th Day of September 2015.

(Parveen)

(SUSHIL KUKREJA)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUMLABOUR COURT, SHIMLA, (H.P)

Ref. No. 30 of 2012.
Instituted on.14.6.2012.
Decided on 14.9.2015.

Sh. Tej Ram S/O Sh. Leela Dass, R/O Village Shakrori, P.O. Chaba, Tehsil Sunni, Distt. Shimla, H.P. ……*Petitioner.*

Vs.

The Executive Engineer, HPSEB, Electrical Division, Sunni, District Shimla, HP.
……*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Kuldeep Guleria, Advocate.
For respondent : Shri Ramakant Sharma, Advcoate.

AWARD

The following reference has been sent by the appropriate government for adjudication:

"Whether termination of the services of Shri Tej Ram S/O Sh. Leela Dass, R/O Village Shakorri, P.O. Chaba, Tehsil Sunni, Distt. Shimla by the Executive Engineer, H.P.S.E.B. Electrical Division, Sunni, Distt. Shimla w.e.f. 26.6.1993, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, to what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer?"

2. Briefly, the case of the petitioner is that during the construction of new electricity line at Thachi, Sunni, he was initially engaged as daily rated beldar by the respondent on 11.3.1993 and since the date of his engagement, the petitioner had worked with the respondent with full sincerity, honesty, deviation as well as to the utmost satisfaction of his superiors. On 22.3.1993, when the petitioner was on duty, along-with other beldars, one cement pole slipped from the shoulder of the petitioner and hit/pressed the foot of the petitioner which resulted in severe injuries and crushed the foot of the petitioner badly. The officials of the Board had not taken care of the petitioner and as such he had left with no other alternative but to remain at the place where the said incident had taken place and after long-gap, some of the beldars took away the petitioner to his residence. Thereafter, the petitioner was admitted in the hospital for a long period for which the petitioner incurred huge expenditure. It is further averred that after getting fitness, the petitioner approached the respondent for re-engagement and after putting the pressure from higher authorities, he was re-engaged. After his reengagement, the respondent instead of taking liberal view for adjusting him in some light duty, the petitioner was assigned the same duties due to which problem again created/developed. Thereafter, the services of the petitioner had again been terminated. The petitioner made several requests for his reengagement but of no avail. The respondent engaged fresh persons from time to time and even juniors to him were also retained in service. Thereafter, the petitioner raised demand notice in which the Labour Officer, Shimla had held that it is not a fit case to be adjudicated by the Labour Court. Being aggrieved, the petitioner filed a CWP No. 1199/2002 before the Hon'ble High Court, in which the Hon'ble High Court directed to make reference. By assailing the order dated 25.5.2002, the respondent filed Letters Patent Appeal No.

207/2007, before the Hon'ble High Court, which was dismissed on 29.3.2012. It is averred that the action of the respondent to terminate the services of the petitioner without any notice and compensation is illegal and against the provisions of the Industrial Disputes Act, 1947 (hereinafter referred as Act). Against this back-ground, a prayer has been made for reengagement of the petitioner including all consequential service benefits. The petitioner has also prayed that the respondent may be directed to pay compensation to him for undue harassment, physical injuries during the course of employment, mental torture, litigation charges to the tune of Rs. 1,00,000/-.

3. The respondent has contested the claim of the petitioner by filing reply wherein preliminary objections qua maintainability, cause of action, delay and latches and that the petitioner has concealed the material facts and particulars. On merits, it has been asserted that the petitioner was engaged for specific work w.e.f. 2.3.1993 to 25.6.1993, and worked only for fifty days for construction of new electricity line at Thachi Sunni. It is further asserted that the petitioner got some minor injury and at the instance of the respondent, he was taken to his residence. He was duly treated for the injury suffered by him. The petitioner filed the claim petition before the workmen commissioner, which was dismissed on the ground that nature of injury was very mild and no permanent disability was found. The petitioner also worked as daily wages labourer at Chaba Power House w.e.f. 4.5.1993 to 25.6.1993 and on the completion of the work, he was dis-engaged along-with other who were employed in the same muster roll. It is also asserted that no junior to the petitioner have been engaged except those who were directed to be engaged by the Tribunals/Courts and only one beldar Shri Trilok Chand had been engaged on daily wages basis as sweeper-cum-chowkidar on 5.8.1999. Hence, the respondent has prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegation by denying those of the respondent.

5. Pleadings of the parties give rise to the following issues which were struck on 7.6.2013.

1. Whether the services of petitioner were terminated illegally by the respondent w.e.f 26.6.1993 as alleged? OPP……..

2. If issue no.1 is proved, to what service benefits, the petitioner is entitled to including compensation if any as alleged? OPP…..

3. Whether this petition is not maintainable as alleged? OPP……..

4. Relief.

6. Besides having heard the Learned counsel for the parties, I, have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Entitled to re-instatement with seniority and continuity but without back-wages.
Issue no.3	No.

Relief. Reference answered in favour of the petitioner and against the respondent, per operative part of order.

REASONS FOR FINDINGS

Issue no.1

8. The case of the petitioner is that when on 22.3.1993, he was on duty along-with other beldars to carry the cement electricity poles, unfortunately, one pole slipped from his shoulder and pressed the foot of the petitioner which resulted in severe injuries and after the recovery from injuries, he was again re-engaged and same duties were assigned to him and thereafter his services had wrongly been terminated without complying the mandatory provisions of the Act whereas juniors to him are still working with the respondent.

9. On the other hand, the respondent has contended that the petitioner was engaged as daily wages labourer for specific work and on the completion of the specific work, his services stood automatically dis-engaged and that no junior to him had been engaged/retained by the respondent.

10. To prove his case, the petitioner has examined four PWs in all. The petitioner stepped into the witness box as PW-1 and deposed that he was engaged as beldar on 11.3.1993. Alongwith him S/Shir Gokul, Yogul, Narender and Nok Chand was also working with him. On 22.3.1993, when he was on duly, along-with other beldars, one cement poll slipped from his shoulder and his foot got fractured. Thereafter, he was taken to Sunni Hospital from where he was referred to IGMC Shimla. At Sunni hospital, the Doctor had advised him rest for fifteen days. The copy of FIR lodged after the accident at Sunni Chowki, is Ex. PW-1/A, which was also sent to Police Superintendent. His statement was recorded vide Ex. PW-1/B and vide Ex. PW-1/C and Ex. PW-1/D, the statements of S/Shri Narender and Yog Kishore were recorded. He had worked with the respondent continuously for one and half year and thereafter he was terminated from service without any notice. The copies of certificate issue by the Pradhan Gram Panchyat Sunni are Ex. PW-1/E and Ex. PW-1/F. Ex. PW-1/G, is the copy of demand notice. He also filed a writ petition before the Hon'ble High Court, the copy of judgment passed by the Hon'ble High Court is Ex. PW-1/H. Thereafter, LPA was filed before the Hon'ble High Court, which was dismissed in the year, 2012 vide Ex. PW-1/J. Neither he was re-engaged nor any compensation was paid to him. Junior to him, are still working with the respondent and their services had also been regularized. In the cross-examination, he has denied that he worked with the respondent w.e.f. 2.3.1993 till 25.6.1995, only for 50 days. He has further denied that he had not worked for 240 days. He has admitted that his claim for compensation has been rejected vide Ex. R-1.

11. PW-2, Shri Krishan Gopal has stated that Tej Ram (petitioner) had come to work after him. He was engaged as beldar in the year, 1983. During the work at Thachi, a cement poll was slipped on the foot of the petitioner and he was taken to PHC Sunni by him for treatment. The petitioner had worked with the respondent till 1995. After recovery, the petitioner had been deputed at Dedog.

12. Shri Yogul Kishore has stepped into the witness box as PW-3, and deposed that during the work of electricity line at Thachi, the petitioner was working and he was also engaged for same work as beldar. One cement poll was fallen down on the foot of the petitioner during the work and he was taken to PHC Sunni by him. The workers who had been working with the petitioner at that time, and who were engaged after him (petitioner), their services had been regularized. The services of the petitioner had been terminated without notice and compensation. Ex. PW-1/D, is the copy of his statement before Police.

13. PW-4, Shri Kundan Lal, has deposed that the petitioner had worked till 1995. The copy of muster roll is Ex. PW-4/A.

14. To rebut the case of the petitioner, the respondent has examined one Shri Raman Chaudhory, Senior Executive Engineer, HPSEBL as RW-1, who has stated that the petitioner was engaged on 2.3.1993 as casual worker on muster roll basis. The petitioner had worked only for 50 days in the year, 1993 as per mandays chart Ex. PW-1/4. The petitioner did not complete 240 days in any calendar year. On 22.3.1993, PCC buts fell down on the peittioner's foot and he got minor injury and after his fitness he was enaged w.e.f. 4.5.1993 and worked till 25.6.1993. On 26.6.1993, due to completion of specific work, his services stood terminated. No fresh and junior persons to the petitioner had been engaged by the respondent except those who were directed/ordered by the Courts. The claim of the petitioner for compensation of his injury had been rejected by the Labour Commissioner. In cross-examination, he has stated that at the time of completion of specific work, no notice for the retrenchment of the petitioner had been issued by the respondent. He denied that all the workers who had been engaged with the petitioner were regularized by the respondent. He admitted that on the directions of the Hon'ble High Court, the claim of the petitioner has been referred to Labour Court under reference. He also denied that the petitioner had worked as store keeper till 1995.

15. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof it has become clear that after the recovery from injury, the petitioner had raised demand notice (Ex. PW-1/G), which was rejected by the Labour Commissioner and thereafter the petitioner filed CWP No. 1199 of 2002, before the Hon'ble High Court and the same was allowed vide order dated 21.5.2007 (Ex. PW-1/H), passed in CWP No. 1014 of 2002. Thereafter, the Labour Commissioner, Shimla had preferred a LPA no. 207 of 2007 before the Hon'ble High Court which was dismissed vide order dated 29.3.2012, the copy of which is Ex. PW-1/J. Thereafter, the present reference has been referred to this court by the appropriate government for adjudication. It is also undisputed fact that the petitioner had worked with the respondent as daily wages beldar w.e.f. 2.3.1993 to 25.6.1993 as per detail of mandays chart Ex. PW-4/A, placed on record but there is nothing on record which could show that the petitioner has completed 240 working days in twelve calendar months preceding his termination. In ***2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others*** , the Hon'ble Supreme Court has held as under:

> ***"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."***

16. In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh, the*** Hon'ble Supreme Court has held that:-

> ***"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."***

A bare perusal of the extract of the judgment produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on

workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination.

17. From the perusal of mandays chart, Ex. PW-4/A, it is abundantly clear that the petitioner had not completed 240 working days in the calendar year preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner. Thus, having regard to the entire evidence on record and on the strength of the above cited rulings, it can safely be concluded that the petitioner has failed to prove on record that he has completed 240 working days in twelve calendar months preceding his termination as it was incumbent upon the petitioner to prove this necessary ingredient that he had completed 240 working days in twelve calendar months preceding his termination.

18. Now, adverting to the other aspect of the case, it is clear that the petitioner was engaged by the respondent department as beldar, who worked with the respondent till 25.6.1993 which fact is not disputed by the respondent. Apart from it, the petitioner has proved on record that his juniors/similarly situated persons, who were engaged for same work are still working with the respondent department by examining PW-3 Shri Yogul Kishore, who has categorically stated that when he was engaged by the respondent during the work of electricity line at Thachi, the petitioner was working as beldar. This statement of PW-3 has remained undisputed as the respondent has not cross-examined the said witness which clearly goes to show that the respondent had admitted that Shri Yogul Kishore (PW-3) is the junior of petitioner. Once, the petitioner has led evidence to this effect that PW-3 Shri Yogul Kishore is his junior, the respondent was bound to rebut the evidence of the petitioner by leading cogent documentary evidence in this regard but nothing such has been done by the respondent. No doubt, the respondent has tried to establish on record that the petitioner was engaged for specific work and on the completion of work, his services stood automatically came to an end. But when regard is given to statement of PW-3, it is clear that he had also worked as beldar in the same electricity line at Thachi for which the services of the petitioner had been engaged, the version of RW-1 Shri Raman Chaudhaory to this effect that on the completion of specific work, the services of petitioner stood automatically came to an end, gets falsified. Sicne, the petitioner has proved on record that his junior Shri Yogul Kishore is still working with the respondent and as such his termination/dis-engagement is clear violation of the principle of first come last go and amounts to unfair labour practice and also clear violation of section 25G & H of the Industrial Disputes Act, 1947. I***ncase titled as State of Haryana Vs. Dilbag Singh reported in 2007 LLR 72 SC, the Hon'ble Supreme Court*** , has held as under:

> "***Where Labour Court found that person junior to respondent was still working and thus there was breach of section 25-G & 25-H of the Act. Court directed reinstatement with 50% back wages."***

In ***State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903, the Hon'ble High Court of Himachal Pradesh, has held as under:***

> ***"Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act."***

19. Thus, having regard to entire evidence on record and in view of above cited rulings, I have no hesitation in coming to the conclusion that Shri Yogul Kishore, junior to the petitioner is still working with the respondent department and as such the termination of services of the petitioner by the respondent w.e.f. 26.6.1993 without complying with the provisions of the Act,

1947 is improper and unjustified as the respondent has violated the principle of first come last go and also violated the provisions of sections 25-G & H of the Act. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

Issue no.2.

20. Since I have held under issue no.1 above that the termination of services of the petitioner by the respondent without following the provisions of the Act is improper, illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity.

21. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In (2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza, the Hon'ble Supreme Court has held that "once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement". It has further been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that "full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry".

22. In the present case, there is no cogent evidence on record led by the petitioner that he was not gainfully employed after his disengagement. The petitioner was under an obligation to prove this fact by leading cogent evidence that he was not gainfully employed after his retrenchment. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma that :

> "16……..**When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim……..**"

23. In the present case, as observed hereinabove, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement i.e. w.e.f. 26.6.1993. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondent.

Issue no.3.

24. In support of this issue, no evidence was led by the respondent being the legal issue. However, I find nothing wrong with this petition which is perfectly maintainable in the present form.

Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity from the date of his illegal retrenchment i.e. w.e.f. 26.6.1993. However the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination and as such the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

11. Announced in the open Court today on this 15th Day of September 2015.

(Parveen)

(SUSHIL KUKREJA)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUMLABOUR COURT, SHIMLA, (H.P)

Ref. No. 43 of 2013
Instituted on.15.7.2013
Decided on 15.9.2015.

Narain Singh S/o Sh. Sobh Ram, Village Lani, P.O. Koti Bounch, Tehsil Shillai, District Sirmour, H.P.

……*Petitioner.*

Vs.

The Divisional Forrest Officer, Forest Division Renukaji, District Sirmour, H.P.

……*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri R.R. Rahi, Advocate.
For respondent : Ms. Reena Chauhan, Ld. ADA.

AWARD

The following reference has been sent by the appropriate government for adjudication:

"Whether the time to time termination of the services of Sh. Narain Singh S/o Sh. Sobh Ram, Village Lani, P.O. Koti Bounch, Tehsil Shillai, Distt. Sirmour, H.P. by the Divisional Forest Officer, Forest Division Renukaji, Distt. Sirmour, H.P. from 2006 to 2007 and finally during March/ April, 2008 without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If

not what amount of back wages, salary, seniority, past service benefits and compensation the above workers is entitled to from the above employers?"

2. In nutshell, the case of the petitioner is that he was initially engaged as daily rated Belder w.e.f. 1.2.2000 and was asked to work at Forest Beat Kharkhan/Jakandu Forest Range Shillai, by the respondent department. He discharged his duties with full sincerity, honesty, devotion and to the entire satisfaction of his superiors and as such his work and conduct had been appreciated by his superiors. He had completed more than 240 days in each calendar year and also preceding to the date of his termination. On 1.4.2001 he had been terminated orally by the Range Forest officer Shillai without serving any notice under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as Act) and paying retrenchment compensation. Feeling aggrieved and dissatisfied with the oral order of termination, the petitioner had filed an O.A. No. 1230/2001, before the Administrative Tribunal, in which an interim order for re-engagement of the petitioner had been passed. It is further pleaded that after the filing of Original Application, before Administrative Tribunal, the petitioner had been re-engaged by the respondent and as such he (petitioner) worked till Sep. 2006 and thereafter, his services had again been terminated orally without complying the mandatory provisions of the Act. The O.A No 1230/2001, was dismissed on 1.3.2006, for want of jurisdiction. In the 2nd week of May 2012, the petitioner approached his counsel, at Shimla, when his services had again been terminated orally and the respondent has retained many juniors to him, only then he came to know that his case was disposed of by the Ld. Administrative Tribunal on the point of jurisdiction in the year, 2006 and thereafter, he was advised by his counsel that for his claim the competent Court is Labour Court as he had sought the relief under the Act. Against this back-ground, a prayer has been made for re-engagement of the petitioner w.e.f. 30.9.2006 including all consequential service benefits.

3. By filing reply, the respondent contested the claim of the petitioner wherein, it has been asserted that the petitioner had himself stopped coming for work without any intimation, who was engaged as Daily wage labourer for seasonal forestry works in Shillai range of Renkuji Forest Division from 1999. Since, the petitioner had not completed 8/10 years with minimum 240 days in each calendar year, hence, his service cannot be regularized in the absence of basic eligibility criteria. It is further asserted that the petitioner had never worked continuously as he was in unforgivable habit of absconding from work very frequently. The petitioner had not completed 240 days in each calendar year except in the year 2005 wherein, he had worked for 270 days. It is further asserted that the present demand notice has come up after 6 years of unexplained delay and that there is no question of issuing any notice or violation of any provisions of the Act. Since, forestry works are seasonal wihch depend upon work and budget, hence the workers/labourers are engaged keeping in view the first come last go principle and as such the question for retaining the juniors of the petitioner does not arise. Consequently, the respondent prayed for the dismissal of the petition.

4. By filing rejoinder, the petitioner reaffirmed the allegations by denying those of the respondent.

5. Pleadings of the parties give rise to the following issues which were struck on 10.1.2014.

1. Whether the time to time termination of service of the petitioner from 2006-2007 by Divisional Forest Officer Renukaji, without complying with the provisions of the Industrial Dispute Act, are illegal and unjustified as alleged? OPP……..

2. If issue no-1 is provide in affirmative what service benefits the petitioner is entitle to? OPP……..

3. Relief.

6. Besides having heard the learned counsel for the parties, I, have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	No.
Issue no.2	Not entitled to any relief as prayed.
Relief.	Reference answered against the petitioner and in favour of respondent, per operative part of award.

REASONS FOR FINDINGS

Issue no.1

8. The case of the petitioner is that his services had wrongly been terminated without complying with the mandatory provisions of the Act whereas juniors to him are still working with the respondent. On the other hand, the respondent has taken a specific stand that the petitioner was engaged as labourer for seasonal forestry works, who left the job on his own and that he had never completed 240 days in each calendar year as such there is no violation of any provision of the Act.

9. The petitioner stepped into the witness box as PW-1 and tendered his affidavit Ex. PW-1/A, in evidence, wherein he has reiterated all the averments as made-out by him in the claim petition. In the cross-examination, he has admitted that he was engaged as beldar for seasonal works in the year, 1999. He denied to have left the job, on his own and that he had not completed 240 days in any year w.e.f. 1999 to 2008 except the year 2005.

10. On the other hand, Shri Vijay Pal Singh, Range Officer, Shillai has appeared in to the witness box as RW-1 and sated that the petitioner had been engaged in November, 1999 for seasonal forestry works and thereafter he was engaged every year for seasonal work as per mandays chart Ex. RW-1/A. However, the petitioner had worked for 240 days only in the year, 2005. The petitioner had abandoned the job, on his own in March, 2008. The copy of notification issued by the HP Government regarding regularization of daily waged workers, is Ex. RW-1/B and as per the same the workers had to work for 240 days per year for ten years continuously but the petitioner had not completed 240 days in each calendar year for ten years. In the cross-examination, he denied that the petitioner had worked continuously till 1.4.2001 and completed 240 days. He also denied that the petitioner had completed 240 days in each calendar year till 3.9.2006. He also denied that after the termination of the services of the petitioner, Ratti Ram, Bir Singh and Mangal Singh who were junior to the petitioner were engaged.

11. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner was engaged as beldar by the respondent in the month of November, 1999. The petitioner, in his affidavit Ex, PW-1/A has categorically stated that he had worked continuously and completed more than 240 days in each calendar year and also preceding to the date of his oral and illegal termination. His services had been terminated without any notice and compensation. But, when regard is given to the mandays chart Ex. RW-1/A, it is abundantly clear that the petitioner had worked only for 15 days in 1999, 147 days in 2000, 2 days in 2004, 270 days in 2005, 121 days in 2006, 43 days in 2007 and 56 days in 2008 but had not

completed 240 working days in the calendar year preceding his alleged termination. In ***2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others*** , the Hon'ble Supreme Court has held as under:

> ***"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."***

12. In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh, the*** Hon'ble Supreme Court has held that:-

> ***"19. In the light of the aforesaid, it was necessary for the workman to produce the relevant material to prove that he has actually worked with the employer for not less than 240 days during the period twelve calendar months preceding the date of termination. What we find is that apart from the oral evidence the workman has not produced any evidence to prove the fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced; no co-worker was examined; muster roll produced by the employer has not been contradicted. It is improbable that workman who claimed to have worked with the appellant for such a long period would not possess any documentary evidence to prove nature of his engagement and the period of work he had undertaken with his employer. Therefore, we are of the opinion that the workman has failed to discharge his burden that he was in employment for 240 days during the preceding 12 months of the date of termination of his service……..."***

A bare perusal of the extract of the judgment produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged upon workman adducing cogent and satisfactory evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination.

13. From the perusal of mandays chart, Ex. RW-1/A, it is abundantly clear that the petitioner had not completed 240 working days in the calendar year preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner. Thus, having regard to the entire evidence on record and on the strength of the above cited rulings, it can safely be concluded that the petitioner has failed to prove on record that he has completed 240 working days in twelve calendar months preceding his termination as it was incumbent upon the petitioner to prove this necessary ingredient that he had completed 240 working days in twelve calendar months preceding his termination.

14. The other plea of the petitioner is to this effect that the persons junior to him have been engaged by the respondent. However, except for the oral statement of the petitioner that Ratti Ram, Biri Singh and Mangal Singh who were junior to the petitioner have been engaged by the respondent, there is no other cogent evidence placed on record by the petitioner to this effect. The petitioner was under an obligation to prove by leading cogent evidence in this regard but no evidence has been led by the petitioner to prove that the persons junior to him were engaged and thereafter retained in service by the respondent.

In (2010) 3 SCC 192, titled as Harjinder Singh Vs. Punjab State Warehousing Corporation, the Hon'ble Supreme Court has held as under:

"……**Moreover, it is settled law that for attracting the applicability of section 25-G of the Act, the workman is not required to prove that he had worked for a period of 240 days during twelve calendar months preceding the termination of his service and it is sufficient for him to plead and prove that while effecting retrenchment, employer violated the Rule of "last come first go" without any tangible reason**."

In the present case the petitioner has failed to prove that the persons junior to him have been engaged by the respondent. Therefore, in the absence of any cogent and satisfactory evidence on record it cannot be held that the provisions of section 25-G of the Act are attracted to the present case and any hostile discrimination was meted out against the petitioner.

15. Hence, keeping in view the entire facts and circumstances of the case, I have no hesitation in holding that time to time termination of services of petitioner from 2006 to 2007 and finally during March/April, 2008 is not illegal and unjustified. Accordingly, this issue is decided in favour of the respondent and against the petitioner.

Issue no.2.

16. Since I have held under issue no.1 above that time to time termination of services of petitioner from 2006 to 2007 and finally during March/April, 2008 is not illegal and unjustified, hence the petitioner is not entitled to any relief as claimed by him. Accordingly, issue no.2 is decided in favour of the respondent and against the petitioner.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be ssent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 15th Day of September 2015.

(Parveen)

(SUSHIL KUKREJA)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

सहकारिता विभाग

अधिसूचना

शिमला, 5 अक्तूबर, 2015

संख्या कोप–ए (3)–1 / 99 भाग–5.––हिमाचल प्रदेश कोऑप्रेटिव सोसाइटीज (संशोधन) रूल्ज, 2015, के प्रारूप को, इस विभाग की समसंख्यक अधिसूचना तारीख 07–07–2015 द्वारा, हिमाचल प्रदेश सहकारी सोसाइटी अधिनियम, 1968 (1969 का अधिनियम संख्यांक 3) की धारा 109 के अधीन यथा अपेक्षित के अनुसार इससे सम्भाव्य प्रभावित होने वाले व्यक्तियों से आक्षेप (पों) या सुझााव (वों) आमन्त्रित करने के लिए, तारीख 16–7–2015 को राजपत्र, हिमाचल प्रदेश में प्रकाशित किया गया था;

और विनिर्दिष्ट अवधि के भीतर इस निमित कोई भी आक्षेप(पों) या सुझाव(वों) प्राप्त नहीं हुआ है / हुए हैं;

अतः हिमाचल प्रदेश के राज्यपाल, हिमाचल प्रदेश सहकारी सोसाइटी अधिनियम, 1968 (1969 का अधिनियम संख्यांक 3) की धारा 109 द्वारा प्रदत शक्तियों का प्रयोग करते हुए, इस विभाग की अधिसूचना संख्या 5–3 / 69–कोप (एस) तारीख 15 मई, 1971 द्वारा अधिसूचित और राजपत्र, हिमाचल प्रदेश में 25 मई, 1971 को प्रकाशित दी हिमाचल प्रदेश कोऑपरेटिव सोसाइटीज रूल्ज, 1971 को और संशोधन करने के लिए निम्नलिखित नियम बनाते हैं; अर्थात्:–

निम्नलिखित नियम बनाते हैं; अर्थात्:–

1. **संक्षिप्त नाम और प्रारम्भ.**––(1) इन नियमों का संक्षिप्त नाम दी हिमाचल प्रदेश कोऑप्रेटिव सोसाइटीज (संशोधन) नियम, 2015 है।

(2) ये नियम राजपत्र, हिमाचल प्रदेश में प्रकाशन की तारीख से प्रवृत्त होंगे ।

2. **नियम 56 का संशोधन.**––दी हिमाचल प्रदेश कोऑप्रेटिव सोसाइटीज रूल्ज, 1971 के रूल 56 के सब–रूल (3) के स्थान पर निम्नलिखित सब–रूल रखा जाएगा, अर्थात्:–

"(3) No Primary society shall employ a salaried officer or servant with total monthly emoluments exceeding rupees five thousand and no secondary or apex society shall employ a salaried officer or servant with total monthly emoluments exceeding rupees eight thousand without the prior permission of the Registrar:

Provided that promotion of any employee to a higher post shall be construed as appointment under this sub-rule:

Provided further that if operating expenses of a co-operative society, excluding the amount of depreciation, exceeds its income in a financial year, such society shall not employ any salaried officer or servant in the next succeeding financial year without the prior permission of the Registrar:

Provided further that no co-operative society shall employ salaried officer or servant exceeding the cadre strength, if any, fixed by the Registrar by a special or general order, and shall not fill more than ten vacancies in a financial year under this sub-rule without prior permission of the Registrar.".

आदेश द्वारा
(पी0 मित्रा)
मुख्य सचिव (सहकारिता)।

————————

[Authoritative English text of this Department notification No. Coop.A (3)-1/99-Vol-V, dated 5.10.2015 as required under clause (3) of article 348 of the Constitution of India].

COOPERATION DEPARTMENT

NOTIFICATION

Shimla-2, the 5th October, 2015

No.Coop. A(3)-1/99-Vol-V.—Whereas, the draft Himachal Pradesh Cooperative Societies (Amendment) Rules, 2015, was published in the Rajpatra Himachal Pradesh on 16.7.2015 *vide* this Department Notification of even number, dated 07.07.2015 for inviting objection(s) or suggestion(s) from the persons likely to be affected thereby as required under section 109 of the Himachal Pradesh Cooperative Societies Act, 1968 (Act No 3 of 1969);

And, whereas, no objection(s) or suggestion(s) has been received in this behalf within the specified period;

Now, therefore, in exercise of the powers conferred by section 109 of the Himachal Pradesh Cooperative Societies Act, 1968 (Act No.3 of 1969), the Governor of Himachal Pradesh is pleased to make the following rules further to amend the Himachal Pradesh Cooperative Societies Rules, 1971 notified *vide* this Department Notification number 5-3/69-Coop(S), dated 15th May, 1971 and published in the Rajpatra, Himachal Pradesh on 25th May, 1971, namely:-

1. Short title and commencement.—(1) These rules may be called the Himachal Pradesh Cooperative Societies (Amendment) Rules, 2015.

(2) They shall come into force from the date of publication in Rajpatra, Himachal Pradesh.

2. Amendment of rule 56.—In rule 56 of the Himachal Pradesh Cooperative Societies Rules, 1971, for sub-rule (3), the following sub-rule shall be substituted, namely:-

"(3) No Primary society shall employ a salaried officer or servant with total monthly emoluments exceeding rupees five thousand and no secondary or apex society shall employ a salaried officer or servant with total monthly emoluments exceeding rupees eight thousand without the prior permission of the Registrar:

Provided that promotion of any employee to a higher post shall be construed as appointment under this sub-rule:

Provided further that if operating expenses of a co-operative society, excluding the amount of depreciation, exceeds its income in a financial year, such society shall not employ any salaried officer or servant in the next succeeding financial year without the prior permission of the Registrar:

Provided further that no co-operative society shall employ salaried officer or servant exceeding the cadre strength, if any, fixed by the Registrar by a special or general order, and shall not fill more than ten vacancies in a financial year under this sub-rule without prior permission of the Registrar."

By order
(P. MITRA)
Chief Secretary (Coop.).

HIGHER EDUCATION DEPARTMENT

NOTIFICATION

Shimla-02, the 30th September, 2015

No. EDN-A-Ka(1)-5/2012.—The Governor, Himachal Pradesh is pleased to order to open the **Government Degree College Rey, Distt. Kangra (H.P.)** with effect from the next academic session 2016-17 *i.e.* from the session June, 2016, in public interest :-

The Governor, Himachal Pradesh is further pleased to order the creation of following teaching and non-teaching posts for newly opened **Government Degree College Rey, Distt. Kangra (H.P.)** as under :-

Sr. No.	Category/Name of Post(s) (For College)	No. of Post(s)	Pay Band/Scale
1.	Principal	01	Rs. 37400-67000+GP 10000
2.	Assistant Professor : (a) English (b) Hindi (c) History (d) Pol. Science (e) Economics (f) Commerce	 01 01 01 01 01 02	Rs. 15600-39100 + GP 6000 (For regular appointee) Rs. 15600 + 6000 = 21600/-PM (For contract appointee)
3.	Librarian (College Cadre)	01	Rs. 15600-39100 + GP 6000 (For regular appointee) Rs. 15600 + 6000 = 21600/-PM (For contract appointee)
4.	Superintendent Gr-II	01	Rs. 10300-34800+ GP- 4800
5.	Senior Assistant	01	Rs. 10300-34800+ GP- 4400
6.	Clerk	02	Rs. 5910+GP-1900 = 7810/-PM (For Contract appointee) Rs. 5910-20200+GP-1900 (For initial two years of regular service) Rs. 10300-34800 + GP- 3200 (Given after 2 years of regular service)
7.	Peon	03	Rs. 4900+GP-1300 = 6200/-PM (For Contract appointee) Rs. 4900-10680+ GP- 1300 (For initial two years of regular service) Rs. 4900-10680+ GP- 1650 (Given after 2 years of regular service)

8.	Chowkidar	02	-do-
	Total Posts..	**18**	

The expenditure will be incurred under Major Head 2202-03-103-01-Soon-Non-Plan for smooth functioning of these colleges.

This issues with prior concurrence of the Fin. Department obtained in the Cabinet meeting held on 24th Sept., 2015.

By order,
Sd/-
Addl. Chief Secretary (Education).

व अदालत अनिल भारद्वाज कार्यकारी दण्डाधिकारी डलहौजी जिला चम्बा हिमाचल प्रदेश

श्री राज सिंह पुत्र श्री छज्जू राम, निवासी गांव व डाकघर सुदली तहसील डलहौजी जिला चम्बा हिमाचल प्रदेश।

विषय.–प्रार्थना पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम 1969.

उपरोक्त प्रार्थी ने अधोहस्ताक्षरी की अदालत में प्रार्थना पत्र, ब्यान–हल्फी वमय अन्य कागजात इस आश्य से गुजारा है कि उसके पुत्र विशाल पठानिया की जन्म–तिथि 05–12–1996 है, जोकि ग्राम पंचायत सुदली के रिकॉर्ड में दर्ज न है। जिसे दर्ज किया जावे।

इस सम्बन्ध में सर्वसाधारण जनता को बजरिया इश्तहार सूचित किया जाता है कि प्रार्थी के पुत्र की जन्म–तिथि ग्राम पंचायत सुदली के रिकॉर्ड में दर्ज करने पर, यदि किसी को कोई उजर–एतराज हो तो वह असालतन या वकालतन अदालत अधोहस्ताक्षरी दिनांक 19–10–2015 को हाजिर आकर अपना एतराज दर्ज करवा सकता है। हाजिर ना आने कि सूरत में एक तरफा कार्यवाही अमल में लाई जा करके नाम व जन्म तिथि दर्ज करने के आदेश दे दिए जाएंगे।

आज दिनांक 17–09–2015 को मेरे हस्ताक्षर व अदालत मोहर से जारी हुआ।

मोहर।

हस्ताक्षरित / –
(अनिल भारद्वाज),
कार्यकारी दण्डाधिकारी,
डलहौजी (हि0 प्र0)।

व अदालत अनिल भारद्वाज कार्यकारी दण्डाधिकारी डलहौजी जिला चम्बा हिमाचल प्रदेश

श्री करण कुमार पुत्र श्री पवन कुमार निवासी गांव व डाकघर बाथरी तहसील डलहौजी जिला चम्बा हिमाचल प्रदेश।

विषय.—प्रार्थना पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

उपरोक्त प्रार्थी ने अधोहस्ताक्षरी की अदालत में प्रार्थना पत्र, ब्यान—हल्फी वमय अन्य कागजात इस आश्य से गुजारा है कि उसकी जन्म तिथि 14—08—1996 है, जोकि ग्राम पंचायत बाथरी के रिकॉर्ड में दर्ज न है। जिसे दर्ज किया जावे।

इस सम्बन्ध में सर्वसाधारण जनता को बजरिया इश्तहार सूचित किया जाता है कि प्रार्थी की जन्म तिथि ग्राम पंचायत बाथरी के रिकॉर्ड में दर्ज करने पर, यदि किसी को कोई उजर—एतराज हो तो वह असालतन या वकालतन अदालत अधोहस्ताक्षरी दिनांक 19—10—2015 को हाजिर आकर अपना एतराज दर्ज करवा सकता है। हाजिर ना आने कि सूरत में एक तरफा कार्यवाही अमल में लाई जा करके नाम व जन्म तिथि दर्ज करने के आदेश दे दिए जाएंगे।

आज दिनांक 07—09—2015 को मेरे हस्ताक्षर व अदालत मोहर से जारी हुआ।

मोहर।

हस्ताक्षरित / —
(अनिल भारद्वाज),
कार्यकारी दण्डाधिकारी,
डलहौजी (हि0 प्र0)।

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ब अदालत सहायक समाहर्ता द्वितीय वर्ग डलहौजी, जिला चम्बा, हिमाचल प्रदेश

मिसल नं0 : 12/IX-A/NT/2015 तारीख दायर दावा : 24—06—2015 अग्रिम तारीख पेशी : 23—10—2015

श्रीमती सुनेना महाजन पत्नी श्री नीरज महाजन, निवासी गांव व डाकघर नैनिखड, तहसील भटियात, जिला चम्बा, हि0 प्र0 .. प्रार्थिया।

बनाम

1. श्री राम चंद सपुत्र श्री विष्णु मित्र, गांव व डाकघर बनीखेत, तहसील डलहौजी, जिला चम्बा, हि0प्र0
2. श्री श्री अमृत लाल सपुत्र श्री विष्णु मित्र, गांव व डाकघर बनीखेत, तहसील डलहौजी, जिला चम्बा हि0 प्र0।
3. श्रीमती शकुन्तला देवी सपुत्री श्री विष्णु मित्र, गांव व डाकघर बनीखेत, तहसील डलहौजी, जिला चम्बा, हि0 प्र0।
4. श्रीमती शीला देवी सपुत्री श्री राम दास, गांव व डाकघर बनीखेत, तहसील डलहौजी, जिला चम्बा, हि0 प्र0।
5. श्रीमती कमला देवी सपुत्री श्री राम दास, गांव व डाकघर बनीखेत, तहसील डलहौजी, जिला चम्बा, हि0 प्र0।
6. श्री अवतार सपुत्र श्री भूपिंदर सिंह, निवासी डलहौजी कैंट, तहसील डलहौजी, जिला चम्बा, हि0 प्र0

.. प्रत्यार्थीगण।

दरख्वास्त बगर्ज तकसीम दावा खाता खतौनी नं0 342 / 355 खसरा नम्बरान किता–2, रकवा तादादी 11–08–00 बीघा महाल बनीखेत जरेई तहसील डलहौजी जिला चम्बा हि0 प्र0।

उपरोक्त प्रार्थीगण ने अधोहस्ताक्षरी की अदालत में मौजा बनीखेत जरेई के खाता खतौनी नं0 342 / 355 खसरा नम्बरान कित्ता–2, रकवा तादादी 11–08–00 बीघा, तहसील डलहौजी जिला चम्बा हि0 प्र0 की तकसीम करवाने हेतु दरख्वास्त गुजारी है। प्रत्यार्थीगण नम्बर 1 ता 5 को समन की तामील नहीं हो रही है अधोहस्ताक्षरी को पूर्ण विश्वास हो चुका है कि उपरोक्त प्रत्यार्थीगण नम्बर 1 ता 5 को समन की तामील साधारण तरीके से नहीं हो पाएगी।

इस सम्बन्ध में उपरोक्त प्रत्यार्थीगण सर्वसाधारण जनता को बजरिया इश्तहार राजपत्र हिमाचल प्रदेश द्वारा सूचित किया जाता है कि वे असालतन या वकालतन अदालत अधोहस्ताक्षरी दिनांक 23–10–2015 को हाजिर आकर अपना एतराज दर्ज करवा सकता है। अन्यथा गैर हाजिरी की सूरत में एकतरफा कार्यवाही अमल में लाई जा करके मौका तकसीम करने के आदेश दे दिए जाएंगे।

आज दिनांक 23–09–2015 को मेरे हस्ताक्षर व अदालत मोहर से जारी हुआ।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय वर्ग,
डलहौजी (हि0 प्र0)।

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ब अदालत विवाह पंजीकरण अधिकारी, बड़सर, उप–मण्डल बड़सर, जिला हमीरपुर, हि0 प्र0

1. Rakesh Kumar s/o Dharam Pal, r/o Village Dugwar, P.O. Kulhera, Tehsil Barsar, District Hamirpur (H. P.)

2. Anjana Devi wd/o Late Joginder Singh, r/o Dadyar, P. O. Tanoh, Tehsil Bangana, District Una (H.P.) .. प्रार्थी।

बनाम

आम जनता .. प्रतिवादी

Rakesh Kumar s/o Dharam Pal, r/o Village Dugwar, P.O. Kulhera, Tehsil Barsar, District Hamirpur (H. P.) ने इस न्यायालय में Anjana Devi wd/o Late Joginder Singh, r/o Dadyar, P. O. Tanoh, Tehsil Bangana, District Una (H. P.) से विवाह पंजीकरण करवाने का आवेदन किया है। अतः इस इश्तहार द्वारा आम जनता व उपरोक्त आवेदनकर्ता के माता–पिता को इस विवाह के पंजीकरण बारे एतराज हो तो दिनांक 14–10–15 को प्रातः 10.00 बजे इस न्यायालय में आपत्ति दर्ज करवा सकते हैं। इस तिथि के बाद कोई उजर स्वीकार नहीं किया जाएगा।

आज दिनांक 15–9–15 को मेरे हस्ताक्षर एवं मोहर अदालत द्वारा जारी किया गया।

मोहर। हस्ताक्षरित / –
विवाह पंजीकरण अधिकारी,
बड़सर, उप–मण्डल बड़सर, जिला हमीरपुर, हि0 प्र0।

ब अदालत श्री देवी चन्द ठाकुर, सहायक समाहर्ता प्रथम श्रेणी एवम् कार्यकारी दण्डाधिकारी, तहसील पधर, जिला मण्डी, हि0 प्र0

मिसल नम्बर : 36 तारीख मरजुआ : 9–2–2015 तारीख पेशी : 16–10–2015

ब मुकद्दमा :

चिन्ता देव पत्नी श्री हेम चन्द, निवासी बनोगी, डा0 पाली, तहसील पधर, जिला मण्डी, हि0 प्र0 .. आवेदनकर्ता।

बनाम

सुन्दर सिंह पुत्र देवी सरन, 2. इदरा देवी पत्नी श्री भूप सिंह, निवासी बनोगी, डा0 पाली, तहसील पधर, जिला मण्डी, हि0 प्र0।

4. गौरा देवी बेवा भगवान दास, निवासी शहर मण्डी, डा0 मण्डी, तहसील सदर, जिला मण्डी, हि0 प्र0 .. प्रतिवादी।

आवेदन पत्र.–जेर धारा–23 भू राजस्व अधिनियम, 1954 के अन्तर्गत खेवट नं0 36, खतौनी नं0 53, खसरा नं0 74 तादादी, रकवा 8–04–16 बीघा में से मेरे सालम हिस्से की तकसीम करने बारे।

उद्घोषणा राजपत्र बनाम श्रीमती गौरा देवी बेवा भगवान दास, निवासी मण्डी शहर, जिला मण्डी, हि0 प्र0।

हरगाह एतद्द्वारा यह सूचित किया जाता है कि उपरोक्त वर्णित फरीकदोमगण की तामील साधारण तौर पर की जानी असम्भव है। अदालत को पूर्ण विश्वास हो गया है कि फरीकदोमगण उपरोक्त की तामील साधारण तौर पर की जानी असम्भव है। इसलिए तामील केवल उद्घोषण जेर धारा–23 भू–राजस्व अधिनियम, 1954 के अन्तर्गत की जानी सम्भव है। अतः फरीकदोमगण उपरोक्त को बजरिया उद्घोषणा के द्वारा आगाह किया जाता है कि आप मिति 16–10–2015 को वरवक्त 10.00 बजे सुबह असालतन या वकालतन हाजिर अदालत आ कर पैरवी मुकद्दमा करें अन्यथा आपके खिलाफ कार्यवाही एक पक्षीय अमल में लाई जायेगी तथा आवेदन–पत्र उपरोक्त को स्वीकार किया जाकर आगामी कार्यवाही कर दी जावेगी।

आज दिनांक 21–09–2015 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर। देवी चन्द ठाकुर,
सहायक समाहर्ता प्रथम श्रेणी एवम् कार्यकारी दण्डाधिकारी,
पधर, तहसील पधर, जिला मण्डी, हि0 प्र0।

नाम दरुस्ती

मैं अंजु कुमारी पत्नी वचन सिंह, गांव कमलाह, डा0 करौर, तहसील नादौन, जिला हमीरपुर सूचित करती हूं कि मेरी बेटी खुशी ठाकुर के सैंटर स्कूल नादौन के रिकार्ड में मेरे पति का नाम मुकेश कुमार गलत दर्ज है, जिसे वचन सिंह ठीक दर्ज किया जाए। खुशी ठाकुर के पिता का नाम पंचायत रिकार्ड में वचन सिंह ठीक दर्ज है।

अंजु कुमारी,
पत्नी वचन सिंह, गांव कमलाह, डा0 करौर,
तहसील नादौन, जिला हमीरपुर।

PUBLIC NOTICE

I, Santosh Kumar s/o Shri Jattu Ram, r/o Village Kadya, P.O. Shalaghat,Tehsil Arki, District Solan do hereby affirm that the name of my son was wrongly recorded in Gram Panchayat Dadhogi, Tehsil Arki, District Solan as Sheetal Kumar, whereas the correct name is Sheetal Thakur. The correct name Sheetal Thakur be entered for all purposes in the Panchayat and other records.

SANTOSH KUMAR,
s/o Shri Jattu Ram,
r/o Village Kadya, P.O. Shalaghat,
Tehsil Arki, District Solan.

PUBLIC NOTICE

I, Santosh Kumar s/o Shri Jattu Ram, r/o Village Kadya, P.O. Shalaghat,Tehsil Arki, District Solan do hereby affirm that the name of my daughter was wrongly recorded in Gram Panchayat Dadhogi, Tehsil Arki, District Solan as Ranjana Devi, whereas the correct name is Ranjana Thakur. The correct name Ranjana Thakur be entered for all purposes in the Panchayat and other records.

SANTOSH KUMAR,
s/o Shri Jattu Ram,
r/o Village Kadya, P.O. Shalaghat,
Tehsil Arki, District Solan.

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है